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# LEGAL Studies 2010

Family Law



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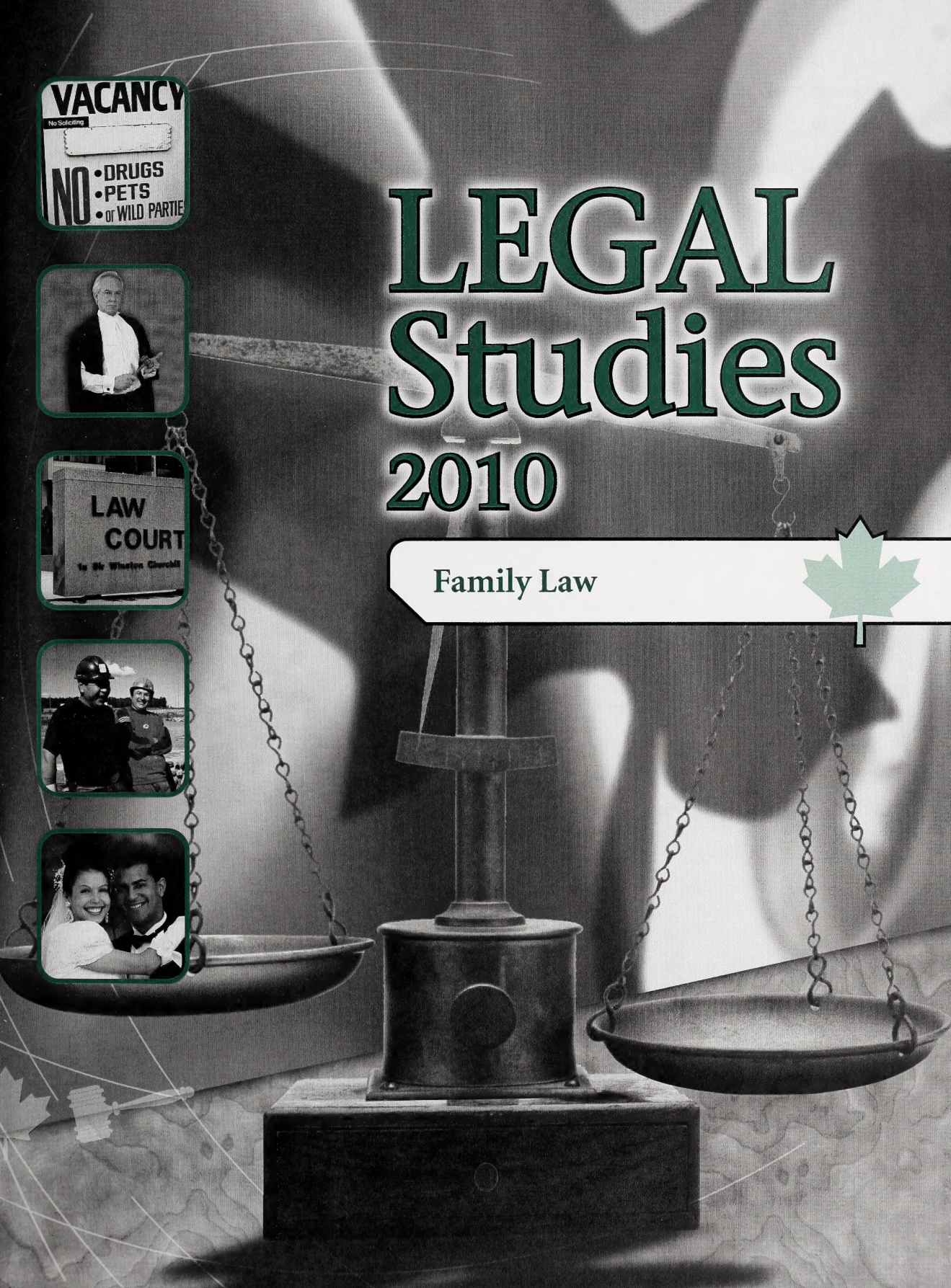
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# LEGAL Studies 2010

Family Law



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Legal Studies 2010  
Family Law  
Student Module Booklet  
Learning Technologies Branch  
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Teachers	✓
Administrators	
Home Instructors	
General Public	
Other	

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- Alberta Education, <http://www.education.gov.ab.ca>
- Learning Technologies Branch, <http://www.education.gov.ab.ca/ltb>
- Learning Resources Centre, <http://www.lrc.education.gov.ab.ca>

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# WELCOME

Welcome to Legal Studies 2010. We hope you enjoy your study of Family Law.



- History of Family Law
- Marriage and Cohabitation Contracts



- Breakdown of Marriage and Cohabitation Contracts
- Extended Family



- Access to Services
- Challenging Issues
- Law-Related Careers

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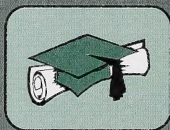
# CAREER AND TECHNOLOGY STUDIES INFORMATION

Legal Studies is one of the 22 strands of Career and Technology Studies designed for Alberta secondary students. The optional CTS program will provide you with opportunities to

- investigate career options and make effective career choices
- use technology effectively and efficiently
- apply and reinforce concepts you learned in other courses
- prepare you for entry into the workplace or further learning

The strands in Career and Technology Studies are designed to stand alone or be integrated with other strands or school courses to meet your learning needs.

CTS has a number of basic competencies (knowledge, skills, and attitudes) that will be identified throughout by these icons:



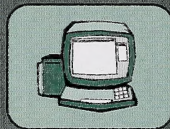
**Careers:** Identify appropriate career linkages within the strand being studied.



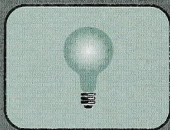
**Communication:** Effectively present concise written, visual, and oral communications.



**Ethics:** Make judgements about whether behaviour is right or wrong on personal, community, and global levels.



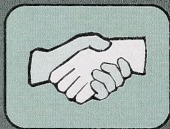
**Technology:** Effectively use technology when required.



**Innovation:** Recognize opportunities and problems, and identify and suggest new ideas.



**Task Management:** Demonstrate an ability to locate and use resources and an ability to use time effectively.



**Teamwork:** Work towards goals co-operatively, collaboratively, or independently, and acknowledge the opinions of others.



**Safety:** Assess potential risks, and follow personal and environmental safety procedures.

These basic competencies build skills that are useful in a broad range of lifetime endeavours.

The eight icons described above indicate to you that a basic competency has been identified in a lesson. Note, however, that some of these competencies might relate more to one strand than another, so it might be that not all icons will appear in this particular course.

**Note carefully that CTS courses are competency based; you must, therefore, successfully complete each component to receive credit for the course.**



# LEGAL STUDIES STRAND INFORMATION



**Introductory**



**Intermediate**



**Advanced**

**Personal  
Context**

LGS 1010  
You and the Law 1:  
As a Consumer and  
as a Family Member

LGS 1020  
You and the Law 2:  
In Society and  
in the Workplace

**Societal  
Context**

LGS 2010  
Family Law

LGS 2020  
Labour Law

LGS 2030  
Environmental Law

LGS 2050  
Law and the Traveller

LGS 3010  
Consumer and Property Law

LGS 3020  
Dispute Resolution

LGS 3040  
Negligence

LGS 3050  
Law and Small Business

LGS 3060  
Controversy and Change

LGS 3070  
Landmark Decisions

LGS 3080  
Criminal Law

--- Recommended sequence

Some of these courses may not yet be in a distance learning format.

# LEGAL STUDIES 2010

## OVERVIEW



If you ever watch the news on television, you've likely noticed how often there's a story about a neglected child, a person who's been abused by a family member, or a parent (usually a woman) who's trying to get her ex-spouse to make regular child-support payments. Then there's the coverage of the latest skirmish in the war over abortion on demand or of the efforts of same-sex couples to become legally married.

Issues related to family law are very much in the public eye these days. Because our society is changing so rapidly and our family relations and structures are altering so quickly, the law is struggling to keep up. The result is a fascinating area of the law to study.

Of course, not all family-law issues frequently make the evening news. The basic rights and obligations of spouses to each other, of parents to their children, and of unmarried couples living together don't often make the front page, but they're very important facts of life. Knowing about them will better equip you for the roles of partner or spouse (and possibly ex-spouse), parent, legal guardian, or grandparent that may lie ahead of you.

In this course you'll study such things as the legal implications of marriage, what happens when couples break up, and the legal difference between marriage and simply living together. In Section 4 you'll examine some challenging issues (like those mentioned at the beginning of this overview) and pick one to research on your own.

Knowing about the laws that affect your personal relationships is very important, but it's something many people neglect. By completing this course, you'll be reducing your chances of being one of those people.

### Legal Studies 2010 Family Law



Section 1  
Marriage and the Law



Section 2  
When Marriages Fail



Section 3  
Family Law—A Broader Perspective



Section 4  
Issues and Careers

# Assessment and Feedback

This course is worth one credit and is comprised of four sections. Within each section, your work is grouped into lessons. Within the lessons, there are readings, explanations, and questions for you to work through. You'll correct your work yourself using the suggested answers that follow each lesson. These suggested answers will provide you with immediate feedback on your progress.

Accompanying this Student Module Booklet are two Assignment Booklets. You'll be referred to the assignments in these booklets from time to time as you work through the course—frequently at the end of a section. Your work in these booklets will be submitted to your teacher for assessment, and at least a portion of your grade will be based on them. The mark distribution is as follows:

<b>Section 1 Assignment</b>	<b>20 marks</b>
<b>Section 2 Assignment</b>	<b>30 marks</b>
<b>Section 3 Assignment</b>	<b>35 marks</b>
<b>Section 4 Assignment</b>	<b>15 marks</b>
<b>TOTAL</b>	<b>100 marks</b>

Be sure to check with your teacher if this mark allocation is valid for you. Some teachers like to include other reviews and assignments.

In addition to your assignments, you will likely be required to complete a final test. The weighting for this final test will be determined by your teacher.

## Resources

In order to complete Legal Studies 2010, you'll need the following resources:

- the course textbook, *All About Law*, fifth edition, by Gibson, Murphy, Jarman, and Grant (Thomson/Nelson Canada, 2003)
- a notebook or binder in which to respond to questions asked in this Student Module Booklet

You should have access to a computer and complete your assignments with a word-processing application wherever possible. As well, you should arrange to have access to the Internet. Though it won't be mandatory, some Going Further activities may direct you to watch a live or recorded television show.

## LearnAlberta.ca

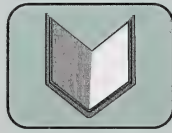
LearnAlberta.ca is a protected digital learning environment for Albertans. This Alberta Education portal, found at <http://www.learnalberta.ca>, is a place where you can support your learning by accessing resources for projects, homework, help, review, or study.

For example, LearnAlberta.ca contains a large Online Reference Centre that includes multimedia encyclopedias, journals, newspapers, transcripts, images, maps, and more. The National Geographic site contains many current video clips that have been indexed for Alberta Programs of Study. The content is organized by grade level, subject, and curriculum objective. Use the search engine to quickly find key concepts. Check this site often as new interactive multimedia segments are being added all the time.

If you find a password is required, contact your teacher or school to get one. No fee is required.

## Visual Cues

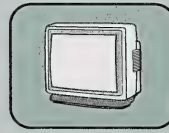
As well as the CTS basic-competency visual cues presented earlier, from time to time you may encounter the following cues or icons in the margin of this Student Module Booklet. Be sure you understand what they're prompting you to do.



**Textbook**



**Internet**



**Television**

Remember that any website address given in this course is subject to change.

## Strategies for Completing This Course

Organize your materials and work area before you begin. Be sure that you have everything that you need. You should also have a quiet area in which to work, away from distractions. Create a schedule for yourself, and display it as a reminder.

Because one of the basic competencies of the CTS program involves skills in working with others, you're encouraged to work with a partner throughout the course if possible. Your partner can be a friend, classmate, or family member. You don't need to work with the same partner all of the time. If you can't work with a regular partner, it would help if there were someone—a family member perhaps—with whom you can work from time to time.

The Going Further boxes that you'll encounter in the Student Module Booklet signal optional enrichment material. Going Further provides opportunities for you to investigate or research a topic or concept that you've explored in the lesson and that particularly interests you. Going Further may also give you a chance to apply your knowledge and skills in a practical way. You're encouraged to read the Going Further suggestions and to attempt these enrichment activities whenever possible.

To achieve success in this course, be sure to read all the directions carefully; work slowly and systematically through the material in the Student Module Booklet. This approach will ensure that you're prepared for your assignments. Try to set realistic goals for yourself each day and each week so that you'll complete the course in a reasonable time. Do your assignments regularly, and don't forget to review and proofread your work before sending it to your teacher. Careful work habits will greatly increase your chances for success in Legal Studies 2010.

# SECTION 1

## Marriage and the Law



Do you hope to marry someday? If you're an older student, perhaps you're already married—or have been in the past. When most people get married, they're in love and don't stop to think much about the legal implications of what they're doing. As you'll see as you work through Section 1, however, marriage is a very serious business involving many legal rights and responsibilities.

In this section you'll be introduced to some of the important legal aspects of marriage. When you're finished the section, you should be able to explain the legal requirements of a marriage and to identify some of the basic rights and responsibilities of spouses and parents.


## Lesson 1: Family Law—An Introduction




Imagine the following scenarios:

- A couple is getting a divorce after 30 years of marriage. Their marriage has been a traditional one in which the husband earned an income while the wife looked after the home and children. Now that they're divorcing, the husband wants to keep everything they own because their possessions have been bought with his money and are registered in his name. Would this be fair?
- A man dies after living with a woman in a "common-law" relationship for ten years. He never bothered to make a will, and friends are telling her that, as a result, all his money will automatically go to his nearest blood relative—a son from a previous marriage. Is this true? Can this woman get a fair share of her partner's estate?
- An elderly couple love their only grandchild and take a close personal interest in her upbringing. When the child's parents divorce, custody of the little girl is awarded to the couple's daughter-in-law, who refuses to allow them to see or speak with their granddaughter. Is there anything they can do about this situation?

Issues like these fall into the area of family law. Family law, as its name implies, deals with the legal aspects of relationships among family members—for example, spouses and partners, children, parents, and grandparents. In this course you'll be investigating the rights and responsibilities family members have toward each other.



But family relationships are built on things like trust, love, and personal responsibility. They aren't legal relationships—like employer and employee.




Certainly the family as an institution is based on all those things, but there has to be a legal dimension as well. If people have a child, for instance, they have legal responsibilities to provide for that child. Of course, it's best if they can do this because of their love for their offspring, but if this fails, the law is there to see that they fulfil their responsibilities—or find someone else who can.

1. Look back at the three scenarios presented at the beginning of this lesson. For each case, explain what you think the rights of the affected individuals are.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

As you'll discover as you work through this course, the laws that govern family relationships have changed greatly in recent years, and they continue to evolve all the time. Of course, this is true of the law in general, but, because the very nature of the family has altered so dramatically over the last few decades, family law has seen greater change than most areas of the law.

Whereas traditionally families were assumed to consist of a father who supported the group financially, a mother who was married to the father and who stayed home to care for the household, and several children, today this sort of grouping has become just one variety among many family groups. Now there are single-parent families, families in which the spouses haven't married, families containing children from the parents' previous relationships, families with no children at all, and families with same-sex partners. Even families structured in the traditional way more often than not have two income earners. Changes like these make family law an intriguing and exciting area of study.



Turn to page 383 of your textbook, *All About Law*, fifth edition, and read sections "13.1, Introduction" and "13.2: The Changing Family Structure" as far as the bottom of page 384. When you've finished this reading, answer the questions that follow.

2. a. In Canada, which level of government has jurisdiction over marriage and divorce?

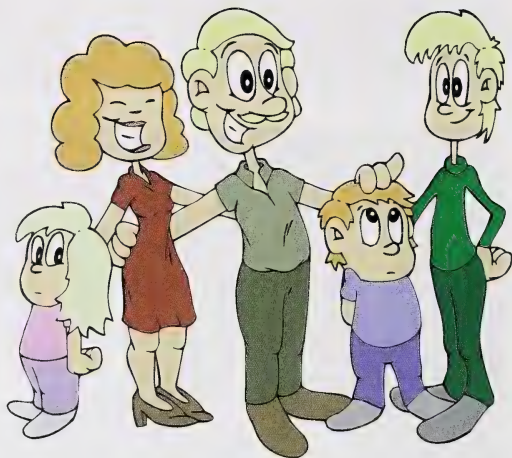
**solemnization of marriage:**  
the steps and processes involved in legally marrying two people



**b.** Which level has jurisdiction over the solemnization of marriage and the requirements of the marriage ceremony?

**3.** Think of your friends and their families. How many different sorts of family arrangements do they represent? If you're working with a study partner, brainstorm for a few minutes to see how many different configurations you can come up with.

**4.** Pick any **one** of the less traditional forms of family that are becoming more commonplace than they used to be. Try to list **at least three** legal questions or issues that a family configuration of this sort would create. For example, in the case of a single-parent family, the question arises as to what legal rights the children's other parent has to visit them and to be involved in their lives.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Lesson 1 has given you a very brief introduction to family law. It's intended simply to get you thinking about issues related to this area of legal studies. In Lesson 2 you'll begin to dig deeper into one of the major areas of family law—the rights and responsibilities of married people.

## Suggested Answers

**1.** Answers will vary. You won't be examining any of these legal situations in this section, but by the time the course is over, you should be able to answer all three. Briefly, here are the rights of the individuals:

- In the first scenario, a judge would take into consideration all the contributions—financial and otherwise—made by the spouses and, following guidelines laid down in Alberta's *Matrimonial Property Act*, try to divide the property fairly. The basic rule is that all property acquired by the spouses while married will be divided equally.
- As far as the second scenario goes, until not long ago it would have been unlikely that the courts would have supported any claims made by the common-law "wife," and this is still true in some provinces. Recent legislation in Alberta, however, has changed all that for long-term common-law unions. Now, the woman in this situation would be able to claim a significant share of her partner's estate. You'll be investigating this legislation in this course.
- In the third scenario, the grandparents would have rights to maintain contact with their grandchild, thanks to federal legislation. Again, you'll be learning about the relevant laws later in the course.



2. **a.** The federal government has jurisdiction over marriage and divorce. This is laid out in Section 91 (26) of the *Constitution Act, 1867*.
- b.** The provincial government has jurisdiction over solemnizing marriages and the requirements of the marriage ceremony. Section 92 (12) of the *Constitution Act, 1867* grants this jurisdiction.
3. Answers will vary, though most people today are quite familiar with a wide variety of family structures.
4. Answers will vary. Here's a sample response based on a common-law relationship with children from a previous marriage:
  - If the couple splits up, what financial responsibilities do they owe each other?
  - What responsibilities do the parents owe the children brought into the family from previous marriages?
  - If one spouse were to die with no will, would the law see to it that dependent family members were looked after?

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## Lesson 2: The Legal Requirements of Marriage

**marriage:** the legal union of two people (historically of a man and woman) to the exclusion of all others

**common-law union:** an informal term for the relationship of a couple who live together—in most respects as if married—but who haven't gone through a legal marriage ceremony

Have you taken Legal Studies 1010 (*You and the Law 1: As a Consumer and as a Family Member*)? If you have, you should already know quite a bit about the basic rights and responsibilities of married people. As you were told in that course, **marriage**, along with the family that often results from it, is one of the oldest institutions in our society. In its origins, of course, it wasn't a legal entity at all, but rather an institution that evolved to give backing—social, moral, and religious—to long-term relationships between men and women. It's an institution that brings responsibility and security into what is, essentially, a sexual relationship. It helps to ensure that any children who result from the relationship will be cared for.

At first, marriages were very much like what people often call **common-law unions** (or, less correctly, *common-law marriages*) today. Couples who wished to simply began living together and raised a family. Society, however, gradually became more complex, and it became necessary to assign legal rights and duties to the parties in a marriage. In this way, marriage became a legal institution. Things like the legitimacy of children and the inheritance of property had to be worked out. If marriages broke up, there had to be ways of determining what belonged to each partner. In this way, the law gradually came to control what had begun as an institution based on sexual relations, love, and trust.



Now read all of page 385 of your textbook, including “Looking Back: Common-Law Marriages.” When you’ve finished, answer the following questions.

1. List **four** legal rights and/or responsibilities brought about by the marriage contract.
2. Explain how, under British law, marriage evolved out of common-law unions.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Before continuing on in this course, note carefully that an important change has recently occurred in the definition of *marriage* in Canada. As it's been traditionally defined—and as it's still defined today in most countries—marriage has been “the voluntary union of one man and one woman to the exclusion of all others.” Today in Canada, however, two people of the same gender can legally marry each other.

The momentum for this change began as courts in a number of provinces declared one-by-one that preventing same-sex couples from marrying was a violation of their rights under the *Canadian Charter of Rights and Freedoms*. As you can imagine, this has been a hot-button issue for many Canadians, but in 2005 the Government of Canada passed a law giving same-sex couples anywhere in the country the right to marry. Canada was only the third country to make this historic move.

In Section 4 you'll be looking at the challenges posed by this recent change to Canadian law. Meanwhile, note carefully that while same-sex marriage is now legal in Canada, and while the numbers of married same-sex couples will certainly increase over time, the vast number of marriages continue to involve the union of a man and a woman. For this reason, the discussions that follow in this course will usually refer to married couples in the traditional sense of husband and wife.



As you read earlier in your textbook, in Canada both the federal and the provincial governments play a role in determining what constitutes a legally valid marriage: The *Constitution Act, 1867* gave the federal government control over marriage and divorce, but the provinces have all passed **statutes** controlling the process of solemnizing marriages. In Alberta, the relevant statute is the *Marriage Act*.

**statute:** a law passed by a government

The chart that follows lays out the seven basic requirements of a legal marriage in Canada. The designated minimum age and the process of solemnizing the marriage are specific to Alberta. If you've taken Legal Studies 1010, this will be a quick review. Note that in some cases—such as sexual capacity—if one partner chooses to overlook the issue, the marriage will still be legal. However, most of the requirements are strictly enforced.

## The Requirements of a Legal Marriage

<b>Minimum Age</b>	In Alberta, you must be 18 to marry without permission of a parent or guardian and 16 to marry with permission. A female under 16 can marry with parental/guardian consent or with a court order if she's pregnant or has a child.
<b>Genuine Consent</b>	Both parties must genuinely want and intend to marry. There must be no <b>duress</b> or trickery, and there must be no mistake as to what is going on.
<b>Permissible Relationships</b>	People getting married cannot be closely related by <b>consanguinity</b> (until recently <b>affinity</b> could also affect the legality of a marriage). The reading you'll be doing shortly in your textbook will explain this more fully.
<b>Freedom to Marry</b>	Both parties must be legally free to marry; in other words, they must be either single, widowed, or divorced.
<b>Sexual Capacity</b>	At the time of the marriage, both parties must have the capacity to form a sexual relationship.
<b>Mental Capacity</b>	At the time of the marriage, both parties must be able to understand the nature of the ceremony and the duties that marriage involves.
<b>Solemnization</b>	According to Alberta's <i>Marriage Act</i> , a couple planning to marry must obtain a marriage licence. As well, they have to go through a legal ceremony carried out by someone with the legal authority to marry people. The ceremony must be witnessed by at least two people.

**duress:** the compelling of a person to do something against his or her will by means of force or the threat of force

**consanguinity:** a blood relationship

**affinity:** a relationship created by marriage



To learn more about the legal requirements of a marriage, turn to page 386 of your textbook and read sections "13.3: Essential Requirements of Marriage," and "13.4: Formal Requirements of Marriage," as far as the discussion of age requirements on page 393. Don't read the case studies on these pages unless you wish to. When you've done this reading, answer the questions that follow.

3. Identify which of the following marriages may be deemed to be lacking at least one of the legal requirements. Explain what requirements are missing.
  - a. Eloise marries Rob, the brother of a man she divorced two years ago.
  - b. Leroy marries Andrea, but wants the marriage to be considered void when he learns that she's sterile (that is, she is physically unable to have children).
  - c. Desperate to marry Gaston, Norma spikes his drinks with alcohol and drugs. When a minister and two witnesses arrive at the house, she tells the inebriated Gaston that the minister is only a friend who will be performing a mock wedding ceremony for fun. Gaston goes along with the ceremony.



- d. Fifteen-year-old Jeannine, who's pregnant, marries her boyfriend. Because of her condition, she doesn't bother getting parental consent.
- e. Loretta and Jake want a very small wedding. In fact, the only people present are themselves and the minister who performs the ceremony.
- f. Arne doesn't really want to marry Lisa, but when Lisa's father tells Arne he'll buy him that sports car he's always dreamed of if he does, Arne agrees.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Marriage, as you can see, has evolved from a simple union of a man and a woman into an institution with tight legal regulations. Of course, it remains a great deal more than a legal institution, but for a marriage to be legally recognized, it must meet the basic legal requirements.

But what rights and responsibilities do people take on when they marry? Answering that question will be the focus of Lesson 3.



Before finishing up Lesson 2, make sure you understand the material covered in it by answering the following question.

- 4. As a Legal Studies student, you're finding that people you know are coming to you with legal questions about marriage. Some of their questions follow. Answer each with a **yes** or **no** followed by an explanation.
  - a. I turn 18 next month. Can I marry my 19-year-old girlfriend?
  - b. I'm legally separated from my husband, and I'm in love with another man. Can I marry this other man?
  - c. My husband suffered extensive brain damage in an industrial accident just weeks after we married. He no longer knows me or understands that we're husband and wife. Can I have our marriage declared void on the grounds that mental capacity is lacking?
  - d. Can I marry my first cousin? She's 16 years old.
  - e. My girlfriend was pregnant and I married her because her mother said she'd have both my legs broken if I didn't. Is my marriage legal?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Going Further



Here's a website that will give you some more practical information on the legalities of marriage in easy-to-understand language:

<http://www.law-faqs.org/ab/marr.htm>

Once there, just click on the topics that interest you.

## Assignment

Now open Assignment Booklet A, turn to the Section 1 Assignment, and answer question 1.

## Suggested Answers

1. The four rights and responsibilities listed in the textbook are as follows:

- Each party is expected to contribute equally.
- Spouses must determine care, custody, access, and support for any children.
- Spouses both have the right to live in the family home.
- One spouse may be legally obligated to support the other.

2. Until the mid-eighteenth century, couples in the English-speaking world often simply had private agreements and moved in together. After they had had sexual intercourse, the marriage was considered to be valid. However, in 1753, the British Parliament passed the *Marriage Act* that set up more formal requirements for a legal marriage; after that, common-law partners lacked the legal rights of truly married couples.

Note that today the law is once again recognizing rights of common-law partners. You'll be learning more about this shortly.

3. **a.** This marriage is valid. As a divorced woman, Eloise is free to marry, and there's no affinity bar preventing a woman from marrying her divorced husband's brother.
- b.** This is a valid marriage. Sterility is not a legal ground for invalidating a marriage. Sterility isn't the same as impotence, which prevents sexual relations from occurring.
- c.** This marriage could be challenged on two counts. First, Gaston lacked the mental capacity to understand what was going on due to the alcohol and drugs he'd consumed, and, secondly, there was no real consent since Gaston was led to believe that this was only a mock ceremony.
- d.** Jeannine needs parental consent to marry below the age of 18 even though she's pregnant. It's possible, however, that if Jeannine does ask her parents for consent and they refuse, she can get a court order to dispense with the consent. This would happen only if the court was satisfied that the consent had been unreasonably withheld.

- e. Unless Loretta and Jake have two witnesses to sign the Certificate of Registration of Marriage, the ceremony won't be legal.
  - f. This marriage would likely stand up. There has been no duress here; Arne is in no fear for his life, safety, or freedom.
4. a. You can marry her now with the consent of a parent or guardian. If you wait until you turn 18, you won't need parental consent.
- b. As a separated person, you're still married, so you can't marry another person. You'll have to get a divorce first. (If this is confusing, it will be made clear in Section 2.)
  - c. Since your husband had the necessary mental capacity at the time of the wedding, the marriage can't be voided on the grounds that it's now lacking.
  - d. There's no law against marrying your first cousin, but since she's under the age of 18, she can get married only if she has the consent of her parents or guardian.
  - e. It's likely that this marriage could be annulled (declared void) since you consented to it under genuine fear for your personal safety. This constitutes duress.

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## Lesson 3: Rights and Responsibilities of a Married Couple



Have you been to many weddings? If you have, you probably associate getting married with celebrations, music and dancing, a banquet, and a general good time. And this is as it should be; after all, the union of two people who love each other is a joyous occasion and one that should be celebrated.

However, people getting married aren't always aware of the serious commitment they're making. The fact is that very few things you'll do in your life will change your legal position in the world as much as getting married will. When you marry, you assume, or take on, responsibilities you've never had before. It's these responsibilities, as well as the rights that go along with them, that you'll be looking at in this lesson.

### **Rights and Obligations of Married People to Each Other**

When people marry, they create a brand-new legal relationship with each other. Their marriage is a legally binding contract and, like any legal contract, it involves obligations on the one hand and rights on the other. Couples approaching marriage often have a difficult time staying focused on this fact. The excitement of the "big day," the time and energy involved in arranging a wedding—especially a big wedding—the anticipation of ending one way of life and beginning a new one—a life together—often make it very hard indeed to take a sober look at the legal aspects of the new life that's about to begin. But that makes it all the more important to make the effort required to understand just what rights and obligations a marriage entails.





So rights and obligations are really just opposite sides of the same thing, right?

That's right. Whenever one party owes a legal obligation to another, that other party has the legal right to expect that the obligation will be discharged. If I agree to pay you \$10, I have the obligation to give it to you, and you have the right to get it from me.



A marriage is a contract, and the courts will enforce it. Earlier, you looked briefly at some of the rights and responsibilities created by the marriage contract. What follows is a closer look at the rights and obligations married people owe each other.

## Financial Maintenance or Support

During the course of a marriage, the *Criminal Code* (Section 215) requires that each partner “provide necessaries of life to their spouse.” That means, conversely, that each spouse has the right to have life’s necessities provided by the other. Just what life’s “necessaries” are isn’t defined, but it would likely mean such things as food, shelter, clothing, and medications. What all this means at a practical level is that if a person’s spouse is unable to provide for himself or herself, as long as they’re married the other one has to see that the basics are there.

## Property Ownership

The question of property ownership usually becomes an issue only when a couple breaks up. When a divorce occurs, Alberta’s *Matrimonial Property Act* sets down guidelines that judges use to decide who owns what. You’ll be investigating this in Section 2. During the course of the marriage, each spouse can continue to own and control the property he or she brought into the relationship. Most married couples pool their money and buy property jointly. Either spouse can make decisions regarding jointly owned possessions—such as selling a car, for instance.



## Debt and Credit

When you're single and you borrow money or buy something on credit, it's your responsibility to pay the money back on the terms agreed upon. If you have a credit card, you're obligated to make the payments required to cover the amounts you've spent—along with the interest the card company charges you. When you get married, this situation doesn't really change; you're still the sole person responsible for your debts. Your spouse won't automatically become responsible for them, nor will you automatically become responsible for those of your spouse.



However, if you go to a bank or another lending institution and co-sign a loan agreement with your spouse, then you will be responsible for the debt if your spouse fails to pay it off. And if you have a credit card that either one of you can use, each of you will be responsible for any debt you run up on it.

## The Matrimonial Home

**matrimonial home:** the home in which a married couple lives

The home a married couple lives in most of the time is called the **matrimonial home**. An Alberta statute, the *Dower Act*, gives each spouse the right to prevent the other from selling the matrimonial home or disposing of it in any way—such as giving it away or bequeathing it in a will—without his or her consent. Each spouse, therefore, has the right to remain in the home after the death of the other.

The *Dower Act* was first passed at a time when it was normal for property—like the family home—to be registered only in the name of the husband (who had probably also earned the money to pay for it). The law was passed to ensure that wives and widows would continue to have a place to live even if their husbands tried to otherwise dispose of their homes.



So, say I'm married and in my will I leave my home—that my husband and I have been living in—to my sister. She won't get it unless my husband agrees?

That's right. He can stay in it until he dies. Then the property should go to your sister, assuming it's in your name.



## Inheritance

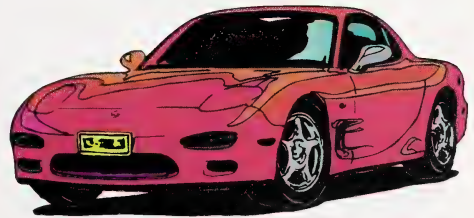


**estate:** the entire collection of assets a person owns at death

While most people getting married aren't likely to be thinking of what will happen if one of them dies, the fact is that in marrying they're assuming rights and responsibilities regarding inheritance. According to Alberta's *Intestate Succession Act*, if one spouse dies without a will, his or her property will go to the other one—to be shared with any children if the estate is over \$40 000.

Even if the spouse who dies has a valid will, a statute called the *Dependants Relief Act* gives a judge the power to decide if his or her dependants have been adequately provided for. That means that if you die and leave everything to your brother while your dependent spouse and children are in want, the court can see to it that enough of your estate goes to these dependants to alleviate this situation.

1. Mr. Lawson and his wife are both successful and financially secure professionals. They have no children. When Mr. Lawson dies, his wife is surprised to learn that in his will he has left his entire estate to a son from a previous marriage. Is it likely that Mrs. Lawson can launch a successful legal action under the *Dependants Relief Act* to get a share of her husband's estate? Explain your answer.
2. Mr. and Mrs. Fedoruk have lived in their family home for 20 years. One day Mr. Fedoruk announces that he's leaving his wife for another woman and that he intends to sell the home, which he paid for and which is registered in his name. Is there anything his wife can do to prevent him from doing this? If so, explain what it is.
3. Mrs. Gough wants a new car, but her husband thinks their old one is just fine. One day, without saying a word to her husband, Mrs. Gough goes to a dealer and buys a sports car loaded with options. She puts down a deposit and arranges to pay for the vehicle in instalments. When it turns out she can't make the payments, the car dealer comes after her husband for the money still owing on the car. Is Mr. Gough legally obliged to pay his wife's debt?



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

# Rights of Parents in Relation to Their Children



Though not all marriages result in the birth of children, many do; and the rights and obligations of parents in relation to their children make up an important part of family law. You'll look first at the basic rights people have when they become parents.

## Guardianship Rights

As a child's legal guardian, a parent has the right to do such things as

- give consent to medical services the child requires
- have control or care of the child's education
- look after any property of the child
- give consent to the marriage of the child until he or she reaches the age of majority
- decide on the child's religion
- receive notice of any legal action being taken against the child

**age of majority:**  
the age at which  
a person is legally  
regarded as an  
adult—in Alberta,  
18

## Custody Rights

**custody:** the  
legal right to care  
for and control a  
child

Custody is the legal term for the right to care for and control a child. Unless a court decides otherwise, a parent has the right to the physical possession of his or her child along with the right to make important decisions about how the child will be raised.

## Going Further

You've now been introduced to some of the principal rights and obligations of married people to each other. Of course there are many more legal aspects to the married state. They include

- spouses' ability to make contracts with each other
- the privileged communication that exists between husband and wife (in other words, the right of spouses not to have to reveal what the other has said)
- the immunity spouses have to being charged with the crime of conspiracy or to be considered "accessories after the fact" to a crime (for example, hiding a spouse after he or she has committed a crime)
- the partial immunity spouses have to being compelled to give evidence against the other in a criminal trial

If any of these legal aspects of marriage interest you, do some research into it (or them) and write up your findings in a short report. Your librarian or Legal Studies teacher should be able to get you started on your research, and the Internet will be a great help. On the Internet, you can get access to the entire *Criminal Code* by going to the website of the federal Department of Justice. The address is

<http://canada.justice.gc.ca/en/index.html>

Once there, click on the "Laws" box in the top-right corner, and, on the page that appears next, click on "Criminal Code."



## Obligations of Parents to Their Children



Along with rights, there are always obligations. There's almost nothing you can do in life that involves more responsibility—at least in a purely moral sense—than creating a human life. This act certainly entails legal obligations as well.

### Maintenance

According to both the *Criminal Code of Canada*, and Alberta's *Family Law Act*, parents must provide their children with necessities such as food, clothing, and shelter. This is true at least until the child is 16, and in some cases the responsibility lasts longer.

### Education

Parents are required by law to provide their children with an education once they're six years old. The education they provide must meet accepted standards; for most people this means sending their children to a school provided by a school board, though more parents these days are opting for alternatives such as home schooling.

## Supervision

Parents have the responsibility to take reasonable steps to see that their children don't come to harm or harm others.



You mean, if I have a kid and she runs into the street after a ball and gets hit by a car, I could be held responsible?

It's not likely—as long as you were exercising reasonable care. A parent can't be expected to control every act of a child. But if you were obviously negligent in supervising the child—leaving her in a closed car on a hot summer day, for instance—you could be held responsible.



### Going Further

You've been told that parents who don't properly supervise their children can sometimes be held responsible for harm that results. The question of whether—and how much—parents are liable for harm their children accidentally do is an interesting part of what's known as *negligence law*. If they are held liable, of course, they'll have to make financial reparations for the harm their children have caused.

In determining whether or not parents have been legally negligent in supervising their children, the standard applied by the courts has traditionally been that of "a reasonably prudent parent in the particular community," though if a child is doing something inherently very dangerous—like driving a car—parents are held more strictly liable.

Some provinces have recently introduced statutes allowing victims of children's vandalism (which, unlike negligence is a deliberate act) to sue the children's parents. To learn more about this new trend in parental responsibility, read "Agents of Change: The Parental Responsibility Act" on page 341 of your textbook.



## Discipline

One of the jobs involved in being a parent is raising your child in such a way that he or she can fit into society in a productive manner. Often this process involves disciplining the child. Section 43 of the *Criminal Code* gives parents the right to discipline their children (and this includes the use of force), but only in ways society considers reasonable. Excessive punishment—physical or emotional—can get a parent charged under the *Criminal Code*. As well, the child may be taken from the home under the authority of Alberta's *Child, Youth and Family Enhancement Act*. The issue of parents' right to spank their children is one that our society is wrestling with right now.

In 2004, the Supreme Court of Canada made a decision supporting the clause in Section 43 that allows parents (and teachers) to use physical force to correct children's behaviour—as long as the force is minimal and never administered in anger.

This issue has been hotly debated for many years. Those in favour of leaving parents with this right argue that it's a tried-and-true method of disciplining children. They add that the government has no right to interfere with how parents raise their own offspring. Those opposed point out that we have laws to protect everyone else from physical harm inflicted by others, yet we leave the most helpless members of our society at the mercy of their parents.



While the Supreme Court of Canada upheld the clause in the *Criminal Code*, it did limit the range of “acceptable” force. And corporal punishment will never be permitted for children under the age of two and for teenagers.

- 4.** What do you think of parents' right to use force to discipline their children—for instance, the right to administer a light spanking in a controlled, calm manner? Should it be allowed? Unless you've already done so in Legal Studies 1010, express your own views on this issue in a short position paper. If you have a study partner, take sides and debate the issue. Try to express your ideas clearly and back them up with solid arguments.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

- 5.** As you've seen, getting married changes your legal status in a variety of ways. Test your knowledge of the material covered in this lesson by identifying each of the following statements as true or false. Be sure to study any you get wrong.
- a.** When you marry, you automatically become responsible for your spouse's debts.
  - b.** When two people marry, all the property each one brings into the marriage becomes the common property of both.
  - c.** Married people have a legal obligation to support each other financially.
  - d.** A married person can't sell the matrimonial home without the consent of his or her spouse.
  - e.** Parents are legally obligated to provide life's basic necessities for their children.



- f. Parents have the right to decide on their children's religion.
- g. Parents have the right to discipline their children according to their own beliefs and values.
- h. Parents have the right to consent to the marriages of their children until their children reach the age of 16.

Turn to the Suggested Answers at the end of this lesson  
and compare your answers with the ones given there.

Of course, getting married and becoming a parent entail more responsibility than this brief legal overview can cover, but this lesson should have given you a sense of some of the legal rights and obligations involved in marrying and creating a family. You'll be returning to look at some of these rights and obligations later in the course.

6. Before moving on to Section 2, here's a short review of the statutes you've been introduced to in Section 1. Identify each statute referred to in the chart that follows and tell whether it's a federal act or a provincial act of Alberta. Note that you may have to go back into earlier lessons.

Provision	Statute	Federal or Alberta?
This statute allows a spouse to live in the matrimonial home for life.		
This statute helps judges divide property between divorcing spouses.		
This statute makes sure dependent family members are looked after in people's wills.		
This statute sets out the process of solemnizing a marriage.		
This statute requires parents to provide life's necessities for their children.		
According to this statute, if a person dies without a will, his or her spouse will inherit from the estate.		

Turn to the Suggested Answers at the end of this lesson  
and compare your chart with the one given there.



## Going Further

Calgary Legal Guidance provides a service called Dial-A-Law that allows people from across the province access to prerecorded legal advice over the telephone, free-of-charge, on a wide variety of issues. In the Calgary area, you can access this service by dialing 234-9022; in the rest of the province, dial 1-800-332-1091. Then simply follow the prerecorded instructions.

Two topics relevant to this section that you might wish to research in this way are

- 116 *Rights and Duties of Parents*
- 137 *Guardianship of Children*

As you work through this course, you'll come upon many more topics for which Dial-A-Law recordings exist. This service is an excellent way to get practical legal advice quickly. But remember, while the service is free, it costs money to maintain. Use it only if you're serious about researching a legal area that interests you.

## Assignment

Now open Assignment Booklet A, turn to the Section 1 Assignment, and answer questions 2 and 3.

## Suggested Answers

1. To launch a successful action under the *Dependants Relief Act*, Mrs. Lawson would have to demonstrate financial dependence on her husband. As a successful, financially secure professional, it's unlikely that she could do this. The *Dependants Relief Act* isn't designed to defeat the wishes people express in their wills but only to ensure that financially dependent family members won't suffer unnecessarily.
2. Alberta's *Dower Act* gives Mrs. Fedoruk the right to prevent her husband from selling their matrimonial home without her consent; so, yes, she can prevent this sale.
3. No, Mr. Gough isn't obliged to pay his wife's debts unless he's co-signed for the loans she's taken out.
4. Answers will, of course, vary. This isn't a simple question; it has ethical, legal, and, according to some people, even religious dimensions. Balancing people's freedoms and rights to conduct their lives according to their beliefs on the one hand with others' need for protection on the other hand is always a challenge for lawmakers. The decision of the Supreme Court, by the way, applies not just to parents but to teachers as well. Teachers argued that they needed the right at times to use force—to break up a fight, for instance. However, teachers are no longer allowed to strap their students.

You'll be looking into more challenging issues like this one in the last section of Legal Studies 2010.

5. a. False
- b. False
- c. True
- d. True
- e. True
- f. True
- g. False (This is true up to a point, but the law protects children against discipline methods felt to be abusive.)
- h. True (While this is true, a court order may be obtained if the parents are deemed to be withholding consent unreasonably.)

6.

Provision	Statute	Federal or Alberta?
This statute allows a spouse to live in the matrimonial home for life.	<i>Dower Act</i>	Alberta
This statute helps judges divide property between divorcing spouses.	<i>Matrimonial Property Act</i>	Alberta
This statute makes sure dependent family members are looked after in people's wills.	<i>Dependants Relief Act</i>	Alberta
This statute sets out the process of solemnizing a marriage.	<i>Marriage Act</i>	Alberta
This statute requires parents to provide life's necessities for their children.	<i>Criminal Code</i> or <i>Family Law Act</i>	Federal ( <i>Criminal Code</i> ) Alberta ( <i>Family Law Act</i> )
According to this statute, if a person dies without a will, his or her spouse will inherit from the estate.	<i>Intestate Succession Act</i>	Alberta

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## Section 1 Conclusion



Section 1 has introduced you to the area of legal studies known as *family law*, and it's given you a brief overview of the legal aspects of getting married. You've looked at the legal requirements of a marriage and at some of the rights and responsibilities involved in being a spouse and a parent. Now that you know a bit about the legalities of marriage, it's time to look at what happens when a marriage breaks up. That's what you'll be investigating in the next section.

# SECTION 2

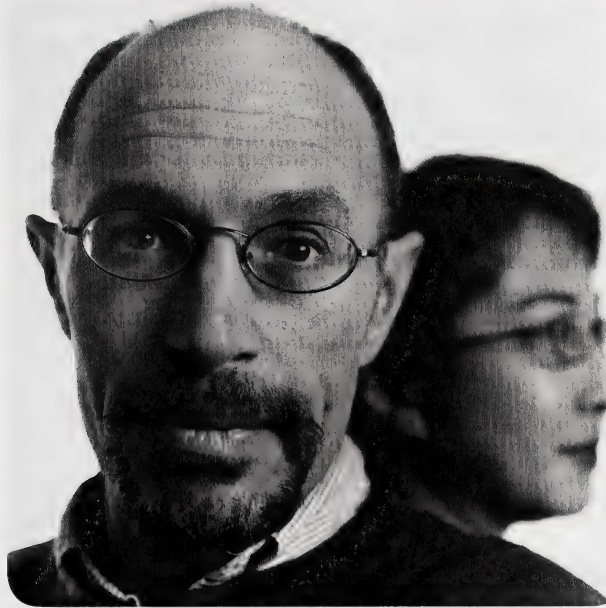
## When Marriages Fail



If you'd lived two or three generations ago, you would have thought of divorce as a rather unusual—and rather scandalous—business. Only two-parent families were considered to be proper, and a divorced woman raising children on her own had a difficult time gaining social acceptance (and things weren't much better for divorced men). Today, of course, things are very different. Divorce and separation are commonplace in our society, and the ratio of divorces to marriages seems to be creeping ever upward. People have many theories about why marriage breakdown is increasing in frequency, but one thing is certain—it's having an impact on the laws governing family relationships.

In this section you'll examine the laws involved in divorce and separation. When you've finished the section, you should be able to explain how a divorce is obtained, what divorcing parents' responsibilities are to their children, and how property is divided up when a marriage fails. You should also be able to explain the function of a marriage contract.

# Lesson 1: Annulment, Separation, and Divorce



How many marriages do you know of that have broken down? Probably quite a few—perhaps even within your own family. The rate at which marriages fail seems to be ever-increasing, and this is a situation with which our courts and lawmakers have to deal.

Couples can effectively end their marriages in several ways. Listed simply, they are

- obtaining an annulment
- living apart
- obtaining a legal separation by way of a separation agreement
- petitioning the court to declare that the relationship is irreconcilable
- getting a divorce

Not all of these processes terminate the marriage in a legal sense, as you'll see, though they do all put an end to the elements that most people consider fundamental to a meaningful married relationship.

## Annulment

Remember those legal requirements of a marriage you looked at in Section 1: Lesson 2? If one or more of those requirements are shown to have been missing, a court may annul the marriage. An **annulment** doesn't put an end to an existing marriage like a divorce does; rather, it states that there was never an actual marriage in the first place. A person whose marriage has been annulled has legally never been married; from a legal point of view, he or she can continue on with life just as before.

**annulment:**  
a court order  
declaring that a  
marriage is void  
and never really  
existed

## Separation

**separation:** the partial ending of a marriage whereby the spouses no longer live together

Unlike the situation with an annulment, a couple who have separated remain legally married. Basically, there are three methods of achieving **separation**.

### Simply Living Apart

When a married couple simply separate physically and live apart from each other, no legal agreement is drawn up. They're still married but lead largely separate lives.

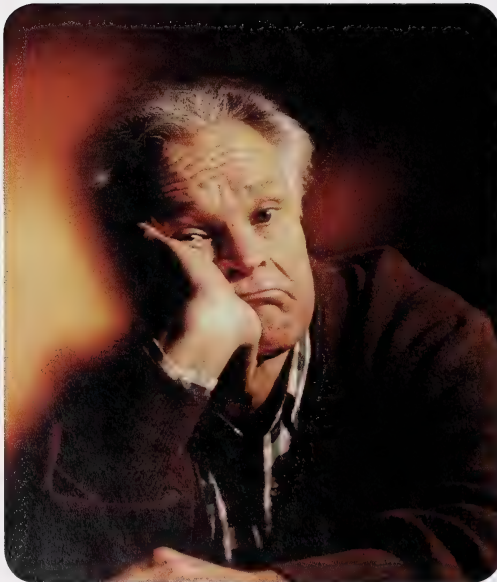
### Legal Separation

Legal separation is a form of separation whereby a legal document called a **separation agreement** is drawn up with the assistance of a lawyer. Separation agreements are contracts enforceable by the courts; they must be drawn up by lawyers and contain a certificate acknowledging that each party had independent legal advice. An agreement of this sort usually contains the following:

**separation agreement:** a contract made between separated spouses outlining such things as the division of property and mutual obligations

- an agreement for the parties to live apart and not to annoy each other
- an agreement on the division of property
- financial provisions (normally with one spouse providing for the other)
- a provision for care of the children if there are any (Note that such provisions are subject to review by the courts. They won't be enforced unless the court is convinced that they're in the children's best interests.)
- a cost-of-living clause

### A Court Declaration



Under Alberta's *Family Law Act*, one spouse can apply for a declaration by the Provincial Court, Family Division that the relationship is irreconcilable. If this is granted, the court will decide all aspects of the division of assets, support payments, and responsibility for any children.

This type of separation is necessary if one of the spouses won't agree to a separation voluntarily; it most often occurs in cases of **desertion**, **assault**, or **adultery**. Separations of this sort aren't common with married couples; if things have reached this stage, most couples opt for divorce.

**desertion:** the physical absence of one spouse with the intention not to return

**adultery:** voluntary sexual relations between a married person and someone other than that person's spouse



Let me get this straight. If I get a separation, I'm still legally married—and I can either just live apart from my wife or I can work out a separation agreement with her with the help of lawyers. And, if worst comes to worst, I can turn to the courts for help.



That's right. Normally a spouse resorts to the last alternative only when the other spouse won't co-operate. Most separating couples today have a separation agreement drawn up with the help of their lawyers and agree to live by its terms.



1. Separation agreements have both advantages and disadvantages. Construct a chart like the following one and try to suggest at least **three** pros and **three** cons for agreements of this sort. If you can, work with a partner to generate ideas.

Separation Agreements	
Pros	Cons

2. Normally people who find themselves in a position where a court declaration of irreconcilability seems appropriate opt for a divorce. Suggest at least **three** reasons why a person might opt for a court declaration rather than a divorce.
3. To learn more about both annulment and separation, open your textbook to page 399 and read all of section "13.5: Annulment and Separation." Don't bother reading the case studies on page 400 unless you wish to. When you've finished, answer textbook questions 3, 5, and 6 on page 402.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

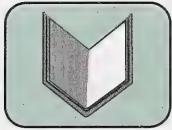
## Divorce

**divorce:** the legal dissolution of a marriage

Divorce is the only way to put a legal end to an existing marriage (annulment, remember, means that the marriage was never valid in the first place). When the partners in a marriage obtain a divorce, they're once again in an unmarried state and are legally free to remarry.

As you should remember, the federal government has authority over marriage and divorce, but until 1968, Canada had no uniform divorce law. Divorces were generally hard to get, and normally they'd be granted only in cases of adultery. To correct this situation, the federal government passed the *Divorce Act* in 1968.

For a quick look at this legislation and the reasons it was passed, turn to page 403 of your textbook and read the material entitled "Looking Back: Canadian Divorce Law." Then answer the questions that follow.



4. a. According to the *Divorce Act, 1968*, how many years of separation or marriage breakdown were required to be recognized as a ground for divorce?
- b. As you'll see shortly, this period has been shortened to one year. Do you think this is a good or a bad idea? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

**petitioner:** in a divorce case, the person who applies to the court for the divorce

**respondent:** the person from whom a petitioner is seeking a divorce

**co-respondent:** in a divorce case, a person charged with having committed adultery with the respondent

**petition for divorce:** the request, made to a court, for a divorce

## Divorce Proceedings

The spouse who begins divorce proceedings is called the **petitioner**, and the other spouse is known as the **respondent**. There may be more than one respondent if the principal respondent has committed adultery with another. In such a case, this latter person is called the **co-respondent**. The application for a divorce is called the **petition for divorce**.

To learn more about the proceedings in a divorce case, turn to page 402 of your textbook and read the material from the heading "13.6: Divorce" to the end of the page. Then answer the questions that follow.

5. a. Why is there a delay of 31 days after a divorce judgement is pronounced before the divorce is final?
- b. Do you think this is a good idea? Explain why or why not.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



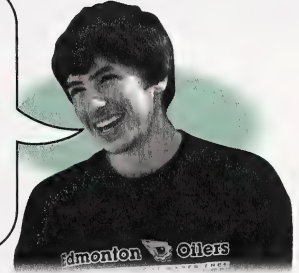
## Obtaining a Divorce Today

As you've learned, Canada didn't have a *Divorce Act* until 1968. In 1985, a new *Divorce Act* (known, not surprisingly, as the *Divorce Act, 1985*) was designed to make it easier for a couple who simply no longer get along to obtain a divorce.



Good idea. I mean, if a marriage isn't working, why shouldn't the partners just be able to go their own ways? It's their lives. Why should there be legal obstacles in their way?

Maybe. On the other hand, if divorces are too easy to get, isn't there a danger that couples with a few problems will just split up rather than making an effort to sort things out? That "Did You Know?" box on page 404 of the textbook sure makes me wonder.



And remember that many divorcing couples have children. What might be easiest for the parents might not be best for the kids.



Well, divorced parents might not be great for kids, but isn't it better than living in an unhappy home?



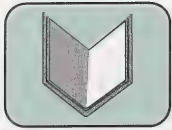
### Going Further

What are your views on this issue? Try to express them in a one-page position paper or, if you're working with a study partner or in a classroom, debate the matter formally or informally.

According to the *Divorce Act, 1985*, marriage breakdown is the only ground for divorce in Canada. For marriage breakdown to be established, at least one of three things must have occurred:

- the spouses have lived "separate and apart" for at least a year
- the respondent in the case has committed adultery
- the respondent has treated the petitioner with physical and/or mental cruelty





To learn more about Canada's current divorce laws, turn to page 404 in your textbook and read from the heading "The Law: The Divorce Act, 1985" up to the heading "Children and Divorce" on page 406. When you've finished this reading, answer the questions that follow.

6. One way for a divorcing couple to establish marriage breakdown is to live apart for a year. But sometimes during that time, a couple will try to get back together again. Imagine that, after having been apart for six months, a couple tries living together for a two-month period but discovers that it's just not going to work. Will that couple have to start their year apart all over again? Explain why or why not.
7. The Mastertons separated two years ago because of Mrs. Masterton's adulterous behaviour, but they found they simply couldn't afford to maintain two households. As a result, Mr. Masterton moved back into the family home, but he lives in a basement apartment and speaks with his wife only on financial matters. Will the courts likely grant Mr. Masterton a divorce? Explain why or why not.
8. Today nearly 90 percent of divorces are uncontested. Explain what this means.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Bars to Divorce

Sometimes a couple tries to get around the rules by which marriage breakdown is established and, in effect, cheat the process. This normally occurs when they want a divorce quickly but no adultery or cruelty has taken place. When judges discover that this has gone on, they may choose to deny the application for divorce. The three so-called bars to divorce are

- collusion
- condonation
- connivance



**collusion:** the agreement between a couple to deceive the court in a divorce hearing

**condonation:** the forgiving by one spouse of behaviour on the part of the other that would otherwise provide grounds for divorce

**connivance:** the permitting or encouraging of one spouse by the other to do something that would provide grounds for divorce

Collusion occurs when the spouses decide between themselves to deceive the court; for example, they might lie and say that they've lived apart for a year when, in fact, they haven't.

Condonation, by contrast, is said to have happened if one spouse has condoned—or forgiven—the other for some wrongdoing—like an adulterous affair. If this has occurred, the couple can't then use the wrongdoing as grounds for divorce.

Finally, connivance involves one spouse's encouraging the other to do something that would be grounds for divorce—like committing adultery—simply so that a divorce will be granted.

If a judge determines that collusion, condonation, or connivance has taken place, it's possible that the court will insist that the couple live apart for a year rather than grant an immediate divorce. If, however, connivance or condonation is established but the judge still thinks it's in the best interests of the couple and their children to grant the divorce, the divorce may be granted.

9. The Ngs want a divorce right away. They agree to tell the courts that Mr. Ng has treated his wife cruelly over the years. If the court discovers this deception, will it affect their plans? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

## Mediation

A major principle of the *Divorce Act, 1985*, is that divorcing couples should, if at all possible, be involved in a voluntary mediation process aimed at working things out as amicably as possible. To learn more about family mediation, read pages 409 and 410 of your textbook. Then answer the following question.



**mediation:** an attempt on the part of a third party to get two opposing parties to reach an agreement

10. In a short paragraph, explain how family mediation works to help divorcing couples. As part of your answer, explain some of the benefits of mediation and list **three** or **four** areas in which mediators can help divorcing couples make decisions.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

11. Before finishing Lesson 1, test your knowledge of Canada's divorce laws and the changes that have occurred to them by identifying each of the following statements as **true** or **false**.
- According to the *Divorce Act, 1968*, a three-year separation was recognized as a ground for divorce.
  - Today in Canada, marriage breakdown is the only valid reason for a divorce.
  - Serious, ongoing mental cruelty is considered sufficient for the courts to decide that a marriage has broken down.

- d. A couple that has lived apart for six months and then once again shares a home for financial reasons may still be able to claim that they're living "separate and apart."
- e. If a husband commits adultery and his wife's behaviour indicates to the court that she's forgiven him, the courts will still likely decide that marriage breakdown has occurred.
- f. Prior to 1968, Canada had no federal law concerning divorce.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Going Further

Try **one** or **more** of the following.



- If you'd like to do more research on any of the topics covered in this lesson, you'll find a good deal of information on the Internet. Here's a website that will get you started. This address will take you to a page in the Canadian Legal Faqs website. Once there, scroll down to "Divorce" and click on the topics that interest you. Check out the "Family Law" topics too.

**<http://www.law-faqs.org/topics.htm>**

Here's another interesting website—a page of the Department of Justice Canada site. Again, select the questions that interest you.

**<http://www.canada.justice.gc.ca/en/dept/pub/divorce/index.html>**



- On page 401 of your textbook, did you notice the online do-it-yourself separation and divorce kit? Here's an address of one company marketing such kits if you'd like to check them out:

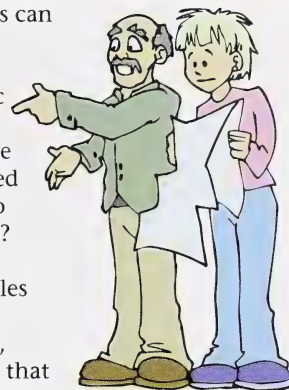
**<http://www.divorcecanada.ca/>**

- If you'd like to get more information about separation and divorce, you can access a number of topics from Dial-A-Law, introduced in a Section 1 Going Further activity. In the Calgary area, you can access this service by dialing 234-9022; in the rest of the province, dial 1-800-332-1091. Then simply follow the prerecorded instructions.

Here are some recordings you might want to listen to:

- 111: *Requirements for Divorce*
- 112: *Divorce Procedure*
- 114: *Annulment*
- 115: *Separation*
- 117: *Divorce Mediation*
- 118: *Uncontested Divorce*
- 120: *Respondent in a Divorce*

This lesson has given you a very quick look at how Canadians can go about getting a divorce. Of course, the process of splitting up a family is never as simple as it might appear from this treatment of the subject. All too often, in fact, it's a traumatic experience for all concerned and one that raises many difficult issues. Who will look after the children? How will the property and assets be divided up? Will one spouse be required to support the other financially? Will he or she be required to support the children? If so, how much support is appropriate?



As you've seen, family mediation is a process that helps couples answer questions like these, but couples can't always agree—especially when they're parting on bad terms. For this reason, there are laws in place to provide answers, and it's those laws that you'll be looking at in the rest of Section 2.

## Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 1.

## Suggested Answers

1. Charts will vary. Compare yours with the one that follows.

Separation Agreements	
Pros	Cons
<ul style="list-style-type: none"> <li>• It tells both spouses just what their legal rights and responsibilities are.</li> <li>• If a divorce follows later, it can serve as the basis for a settlement.</li> <li>• It's usually more flexible than a court declaration of irreconcilability, whose terms would be imposed on the unco-operative spouse.</li> <li>• The couple can agree on an arrangement they're both happy with.</li> </ul>	<ul style="list-style-type: none"> <li>• Since both parties must consent to all the terms, it can be hard to arrive at a mutually satisfactory agreement.</li> <li>• It locks both parties in unless both agree to a change.</li> <li>• It can be difficult and expensive to enforce if one party fails to abide by it.</li> <li>• A spouse may contract away rights he or she would otherwise have had.</li> </ul>

You may have thought of other pros and cons. Most legal experts agree that the positive aspects of a well-thought-out separation agreement definitely outweigh the negative aspects.

2. Answers will vary. Compare your ideas with those that follow.

- The person asking for a court declaration may not believe in divorce on religious or moral grounds.
- It might be to the financial advantage of the person wanting the separation to remain married to a spouse likely to die first (remember rights conferred on married people in such statutes as the *Dependants Relief Act* and the *Dower Act*).
- The person wanting the separation might still hope that the marriage can be saved.
- The length of time that would entitle the couple to a divorce may not have yet elapsed (you'll be learning more about this later in this lesson).

Did you think of other reasons?

3. **Textbook question 3:** An annulment can be obtained when a legal requirement of a valid marriage is missing.

**Textbook question 5:** Legal separation occurs when a couple begins to lead separate lives. This does not necessarily mean living in different homes, though most often it does.

**Textbook question 6:** Four issues usually included in a separation agreement (of which you were asked to identify three) are

- the ownership and division of property and debts
- the way the family home will be treated
- child and/or spousal support
- child custody and access rights

4. **a.** Three years of separation were required by the *Divorce Act, 1968*.

**b.** Answers will vary. Most people believe that one year is enough to show irreconcilable differences; they feel that forcing couples to wait three years is to impose unnecessary hardship. You may, however, disagree. You might believe, for instance, that divorce is such a serious matter, especially for any children involved, that obtaining a divorce shouldn't be made too easy for a couple who are having problems.

5. **a.** The 31-day delay is to give couples one last chance to patch up their marriages and to allow either party to appeal the judgement.

**b.** Answers will vary, but most people think it's a good idea. Sometimes, faced with the immediate reality of divorce, couples find themselves able to patch things up at the last minute.

6. No, this couple won't have to wait. The law allows couples up to 90 days within their year apart to reunite in an attempt to work out their differences. If they go over the 90 days, however, the clock starts all over again.

7. It's likely that the courts will grant Mr. Masterton's petition. If his wife contests the divorce, she might claim that by moving back home, her husband was forgiving her behaviour. However, the facts are that the move was made for purely financial reasons and in no meaningful way have the couple been living as husband and wife. For these reasons, the court would almost certainly side with Mr. Masterton. As long as a couple lives apart in every meaningful sense, the law allows them to share a dwelling for financial reasons.
8. An uncontested (or undefended) divorce is one that the *Divorce Act, 1985* allows to take place without the separating couple having to appear in court. If there are no contested issues—such as property distribution or child custody—a judge can simply read the relevant documentation and, if satisfied that all is in order, grant the divorce.
9. Yes, this will certainly affect the Ngs' plans. They have committed the bar to divorce known as *collusion*—deceiving the court.
10. The *Divorce Act, 1985* stresses the importance of divorce mediation to resolve problems between divorcing spouses. This can save costly, and sometimes bitter, disputes in the courts. Basically, when mediation takes place, the divorcing couple meet with trained mediators to work out mutually agreeable arrangements in matters such as child custody, property distribution, spousal or child support, and ways of resolving disputes in child-related areas like schoolwork and household rules. If these matters can be worked out at mediation, contracts can be put together between the spouses that serve as a basis for the divorce settlement. Successful mediation can save couples whose marriages have broken down a great deal of time, effort, and emotional upheaval.
11.
  - a. True
  - b. True
  - c. True
  - d. True
  - e. False
  - f. True

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## Lesson 2: Children and Divorce



Are you perhaps a child of a marriage that ended in divorce or separation? If so, you probably have a very deep understanding of just how seriously marriage breakdown can affect the children involved. Often the bitterest arguing that goes on during divorce proceedings concerns the children, though the courts do their best to see that throughout the dispute the best interests of the children are always put first.

### Custody

As you saw in Section 1, *custody* is the legal right to care for and control a child. When a married couple with children get divorced, the question always emerges as to who will get custody of the children.

Note that in Alberta today, the word *custody* is correctly used only in situations where a legally married couple divorces. If an unmarried couple with children breaks up, or if a married couple separates but doesn't get an actual divorce, Alberta's *Family Law Act*, rather than the federal *Divorce Act*, comes into play, and this statute doesn't award custody to either parent; rather, it may make what's called a *parenting order*. When an actual divorce is taking place, however, the term *custody* is still used, and it's divorce that's the topic of this lesson.

If a married couple are divorcing in a peaceful, friendly manner, they can often work out an arrangement on their own—perhaps with the help of family mediation. If they can't agree, however, at least one of them will have to apply for a custody order.



**joint custody:** a court order giving both parents legal responsibility for important decisions regarding their child

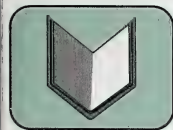
**sole custody:** a court order giving one parent legal responsibility for important decisions regarding his or her child



**access:** the right of a non-custodial parent to visit a child and enquire about important issues in his or her life

**custodial parent:** the parent awarded custody of a child

**non-custodial parent:** the parent denied custody of a child (but usually required to provide financial support)



Sometimes both parents are awarded custody. This situation, known as **joint custody**, means that both parents share equally in caring for, and making important decisions for, the children. The advantage of joint custody is, of course, that the children maintain close contact with both parents. There are, however, disadvantages to a joint-custody arrangement, and for this reason it isn't granted as often as sole custody.

1. Try to suggest a few problems with joint custody arrangements that would discourage courts from awarding this sort of custody too often. If possible, brainstorm ideas with a study partner or classmate.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

When one parent is awarded sole custody of a child or the children, the other parent is normally awarded access—the right to visit the children and enquire about important matters concerning their lives. (The parent awarded custody is known as the **custodial parent** while the parent denied custody is the **non-custodial parent**.) When making decisions as to custody and access, the courts have to be extremely careful; after all, their decisions will have a profound impact on the lives of the people involved. Judges take many factors into consideration, but above everything else they'll try to base their decisions on the best interests of the child or children involved. In other words, the wishes of a parent are secondary to the perceived needs of the children.

2. Imagine you're a judge deciding which parent will be granted custody of the children in a divorce case. List the factors you'd consider in coming to a decision. If you have a study partner, work on your lists together. The list has been started for you.

- the stability of the home life each parent can offer



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

To learn more about the issue of custody and access, turn to page 417 of your textbook and read all of section "14.2: Custody" (ending on page 428). This is quite a lengthy reading. However, you can skip the case studies to shorten things significantly.

Do take your time and study the material carefully. When you've finished, answer the questions that follow. Note that question 3.b. asks you to construct a chart; you might wish to work on your chart as you do your reading.

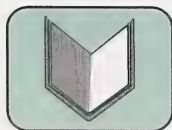
3. a. What is the only test the courts use in deciding who gets custody of a child in a divorce case?
- b. Construct a chart like the one that follows and in it list the main factors involved in determining custody along with a few point-form explanatory notes for each one. The chart has been started for you.

Factors	Explanations
<i>Stability of Home Environment</i>	<ul style="list-style-type: none"> <li>• <i>This is the most important factor.</i></li> <li>• <i>Instability is stressful for children.</i></li> <li>• <i>Courts are opposed to shifting children between parents.</i></li> <li>• <i>Often the parent given interim custody gets final custody.</i></li> </ul>



- c. How does your chart compare to your own list in question 2? Would you add anything to the list of factors the courts use in determining custody? Explain your answer.
4. Explain the difference between joint physical custody and joint legal custody. In your answer explain which one is more common and why.
5. The report *For the Sake of the Children*, which you read about in the textbook reading, may cause significant changes in the way the courts deal with the custody issue. Explain the changes likely to be made in the *Divorce Act* if the report's recommendations are implemented.

Turn to the Suggested Answers at the end of this lesson  
and compare your answers with the ones given there.



Along with custody go the access rights of the non-custodial parent. In your textbook, read section "14.3: Access and Mobility Rights" up to the heading "Child Abduction" on page 431. This time, include in your reading the case study *Gordon v. Goertz* on pages 430 and 431. When you've completed the reading, answer these questions.

6. Identify and explain the three different types of access orders issued by the courts.
7. Problems arise when a custodial parent wants to move far away from the home of the non-custodial parent. Explain why this issue of **mobility rights** can be a difficult one for courts to resolve.
8. Do you agree with the decision in the case *Gordon v. Goertz*? Be sure to give your reasons.

**mobility rights:**  
the freedom to move around the country and live in different places; specifically, the freedom of a custodial parent to move out of the province


Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Child Support


### Traditional Methods of Determining Support

As you've learned, married parents both have a legal obligation to support their children financially. Usually, when a couple divorces, the question arises as to just how much each spouse is expected to contribute to bringing up the children. In the past, two factors were used to determine how much each spouse—custodial and non-custodial—must contribute:

- need
- the ability to pay



So let's say I was the non-custodial parent. The court decides how needy my kids are, checks out how much money I make, and figures out how much I have to pay my ex-spouse for their upkeep?



That's right. Then you make monthly support payments to your ex that he's supposed to use to give your children a standard of living as close as possible to the one they'd enjoyed before the divorce.

In implementing this approach to child-support (or *maintenance*) payments, the courts traditionally followed three steps:

- They determined the amount of money needed to support the child's needs.
- They divided this amount up according to the parents' incomes.
- They ordered the non-custodial parent to pay his or her portion over to the custodial parent, normally on a monthly basis.

## Recent Changes in Child-Support Laws

Over the years, however, many criticisms were leveled at this traditional method of determining child support. Following are the three most serious:

- It was difficult for custodial parents to collect the support payments that the courts ordered their ex-spouses to make.
- Non-custodial parents making support payments were able to claim these payments as income-tax deductions (thereby reducing the tax they had to pay) while the custodial parents receiving these payments had to pay income tax on them. Many people felt that this discriminated against women—albeit unintentionally—because traditionally women have most often been custodial parents.
- Judges had a great deal of discretion in determining the size of payments to be made by non-custodial parents. This resulted in widely differing decisions on how much non-custodial parents had to pay.

Because of criticisms like these in 1997, changes were made to the *Divorce Act, 1985* and to the *Income Tax Act* (both federal statutes). The principal difference is that now the need of the children and the custodial parent is no longer taken into consideration to the degree it once was in determining support payments. Instead, judges are provided with tables that stipulate very precisely what a supporting parent should pay based solely on his or her gross income (and those payments can no longer be claimed as a tax deduction). Judges are allowed some discretion in awarding payments in cases of “undue hardship,” but far less than they once were. In most cases, support-payment awards are now worked out almost entirely on the basis of the supporting parent’s ability to pay.

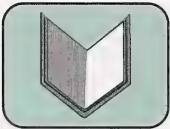
To learn more about the way child-support legislation works, turn to page 433 of your textbook and read section “14.4: Child Support” down to the bottom of page 436, skipping the case study on pages 435 and 436. Then answer the following questions.



9. What **three** factors are used today to determine an appropriate level of child support on the part of non-custodial parents?

10. Identify **four** situations where the courts might not exactly follow the child-support tables.

11. Before the 1997 changes to the *Divorce Act*, the income of both the custodial and non-custodial parent was taken into account, but now judges look only at that of the non-custodial parent. Do you think this is fair? Explain why or why not.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

As you'll recall, one of the big complaints in the past was that frequently custodial parents (most often mothers) had trouble actually getting the payments from the non-custodial parents that the courts had awarded them. The term *deadbeat dads* was used to label fathers who failed to live up to their child-support commitments—though it's important to remember that deadbeat moms have existed too. Perhaps *deadbeat parents* is the best term.

You've read that federal laws now let provinces use federal data banks to locate parents behind in their payments. The provinces, meanwhile, have set up programs to help custodial parents get the money owing them. In Alberta, custodial parents can register, free of charge, with the Maintenance Enforcement Program (set up by the *Maintenance Enforcement Act*). At present, almost 50 000 Alberta families are registered with this program.

Once a family is registered, the program director will then be responsible for collecting the money from the debtor (the non-custodial parent) and giving it to the custodial parent. If the debtor refuses to pay, the director of the enforcement program can have his or her wages **garnisheed**; in other words, an amount can be deducted from the wages each month before they're even paid to the debtor by his or her employer and given, instead, to the enforcement program. The director of the Maintenance Enforcement Program may also fine unco-operative debtors and impose other penalties—like restricting hunting and fishing licences. In this way, custodial parents today have a much better chance than they once did of collecting their child-support (or maintenance) payments.



**garnishee:** to legally withhold all or part of a debtor's wages each wage period and pay them to the party owed money until the debt is paid

## Going Further

The following address, part of the Alberta Justice website, will give you more information on Alberta's Maintenance Enforcement Program (MEP). Once there, click on the questions that interest you.

<http://www.justice.gov.ab.ca/mep/default.aspx#jumpFAQS>

You can see that while it's easy to say that parents have an obligation to support their children, it's not a simple matter to work out and enforce the matter of child support in divorce cases. The problem of deadbeat parents is a real one; and the 1997 changes to the *Divorce Act* are an attempt to solve it—though some people believe that the 1997 changes are actually too hard on non-custodial parents. This is an issue that isn't likely to go away in the near future.



## Going Further



- To finish up this lesson, here are two addresses you were given earlier, but, now that you've learned about other issues, you may want to go back and investigate different topics covered in Lesson 2:

<http://www.canada.justice.gc.ca/en/dept/pub/divorce/index.html>

<http://www.law-faqs.org/topics.htm>

- Another idea is to use the Dial-A-Law program to listen to recordings explaining aspects of maintenance orders. As you may recall, in the Calgary area, you can access this service by dialing 234-9022; in the rest of the province, dial 1-800-332-1091.

Two recordings to listen to are

- 131 *Custody and Access*
- 132 *Maintenance Orders*
- 133 *Enforcing a Maintenance Order*

## Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 2.

## Suggested Answers

1. Answers will vary. Compare your ideas with those that follow:

- If the children have to keep moving back and forth between the parents' homes (a system called *joint physical custody*), it can cause stress and instability while creating problems such as how they'll attend school. (Because of this, most joint-custody arrangements involve the children living with one parent while seeing a great deal of the other—a system called *joint legal custody*.)
- The parents must be able to work together on the children's upbringing; this can be very difficult when ill will has been created during the separation process.
- The parents should be in agreement on matters such as religion, education, and medical treatment of their children. This can be difficult.

Did you think of any other problems?

2. Lists will differ. The reading you're about to do in your textbook will present the principal factors judges do consider; compare them with your own list.

3. a. The only test is the best interest of the child.

b. Compare your chart with the one that follows. Note that you may have selected rather different points in writing your explanations.

Factors	Explanations
Stability of Home Environment	<ul style="list-style-type: none"> <li>• This is the most important factor.</li> <li>• Instability is stressful for children.</li> <li>• Courts are opposed to shifting children between parents.</li> <li>• Often the parent given interim custody gets final custody.</li> </ul>
Separation of Siblings	<ul style="list-style-type: none"> <li>• Siblings are not separated without good reason.</li> <li>• Siblings provide stability for each other during marriage breakup.</li> <li>• If separated, the mother often gets girls and younger children while the father gets boys and older children.</li> </ul>
Children's Preferences	<ul style="list-style-type: none"> <li>• Courts may take children's preferences seriously into account.</li> <li>• The preference of younger children is most likely less important than those of older ones.</li> </ul>
Parental Conduct	<ul style="list-style-type: none"> <li>• Parents' past conduct is used to determine custody only where it's relevant to parenting.</li> <li>• Parents' sexuality is an issue; the emphasis is on how parents handle it rather than what it is.</li> <li>• The best interests of children will prevail.</li> </ul>

Religion	<ul style="list-style-type: none"> <li>• religion often used as weapon by custodial parent</li> <li>• not impossible to bring children up by parents of different religions if mutual respect shown</li> <li>• children's best interests again must prevail</li> </ul>
Tender Years Principle	<ul style="list-style-type: none"> <li>• belief that in early years of childhood children are better off with their mother</li> <li>• at one time mother almost certain to get children</li> <li>• now doctrine not as important</li> <li>• now either parent can be granted custody</li> </ul>

c. Answers will vary. Does the chart contain any factors you didn't consider when answering question 2?

4. Joint physical custody involves children living with both parents and moving back and forth between their houses. With joint legal custody, the children stay with one parent but the other has generous access rights and can participate in making decisions that affect the lives of the children. Joint legal custody has been more common because it can be hard on children to be constantly moving back and forth between two homes, especially if they're far apart. This can aggravate the lack of stability in the children's lives caused by the original family breakup. However, joint physical custody has recently become more common than it was, especially where parents live near each other. Indeed, this can be a motivation for the parents to reside in the same neighbourhood.
5. If the report's recommendations are implemented, the *Divorce Act* may be amended to remove the whole idea of custody and access. Instead, divorcing parents would have to come up with a plan allowing them to share parenting responsibilities. Also, processes would become less adversarial than they are now to ensure that the best interests of the children are always looked after.
6. The three types of access orders are as follows:
  - Reasonable access has children spending time with the non-custodial parent in a flexible, regular way. Normally, reasonable access is ordered where relations between the parents are good and they've worked things out in a way they both find acceptable.
  - Specified access involves children spending time with the non-custodial parent at precise times and for specified durations—for instance, after school and on holidays.
  - Supervised access is ordered when the child's safety is in some doubt—for example, if the non-custodial parent is an alcoholic or has been abusive. Under these orders, the non-custodial parent has access to his or her children only under the supervision of another person—a grandparent, perhaps, or a social worker.



7. When the custodial parent moves far away from the non-custodial parent, taking the children along, the non-custodial parent can no longer have regular access to the children. This is one way custodial parents can prevent their children from ever seeing their other parents. However, sometimes it's in the best interest of the children to move—for example, if the custodial parent can in this way get a better job and so provide for them better.

Normally the courts allow custodial parents to move as long as the move seems to be in the children's best interests. But the courts will prevent a move if they think it's just an attempt to prevent the non-custodial parent from being involved in the children's lives.

8. Answers will vary. No doubt, the court felt that the move was a legitimate attempt on the part of the mother to enhance her career and not just a way to take Samantha away from her father. The judge relied on the original court's decision that the mother was the best person to be Samantha's custodial parent, and, putting Samantha's interests first, dismissed her father's appeal.

Perhaps you disagree with this judgement. After all, there are dentistry faculties in Canadian universities. Whatever your viewpoint, did you back it up with reasons?

9. The three factors are

- the income of the non-custodial parent
- the number of children
- the federal child-support tables

10. Exceptions can be made for a number of reasons. Compare your four situations with these:

- There are reasonable child-care expenses resulting from work, school, or illness.
- There are medical expenses over \$100 not covered by insurance.
- There are extra expenses that allow a child to pursue a special interest.
- There are post-secondary education expenses.
- Standard payments would cause undue hardship for the non-custodial parent.
- In a joint-custody arrangement, the paying parent cares for the children for at least 40 percent of the time.
- The annual income of the paying parent is over \$150 000, and the court thinks that circumstances warrant changing the amount in the tables.

11. Positions will vary on this issue. On the one hand, it can be argued that each parent should remain financially responsible for his or her children and so should contribute what the law thinks is appropriate. It can also be added that if this system isn't in place, a custodial parent who works hard and becomes financially successful will be penalized for doing so in that the other parent won't have to pay as much.

On the other hand, it can be argued that if a non-custodial parent is struggling to make payments while the custodial parent is living in the lap of luxury, things aren't exactly fair. Why should a parent with little money make payments to a rich one? (This is, by the way, one of the situations where judges may deviate somewhat from the maintenance tables.)

It's not an easy question, is it?

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## Lesson 3: Property Division and Spousal Support



### The Matrimonial Property Act

If there's one issue in marriage breakdowns that can generate almost as much ill will as that of child custody, it's the division of the property owned by the couple. As you learned in Section 1, spouses can own and control property separately while they're married; the right of married women to own property in their own names was granted first by Britain's *Married Woman's Property Act* in 1882. It was later granted by the various Canadian provinces in statutes of their own.

This system was a great improvement for married women, but it didn't work so well when their marriages broke down.

The trouble was that until fairly recently most married women stayed home and looked after the household and children while their husbands went out, earned money, and looked after the financial affairs of the family. That meant that while women had the right to own property, in reality most of a family's possessions—house, furniture, investments, and so on—were bought with the husband's money and registered in his name alone.

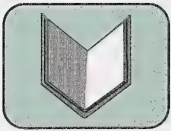
And even where a wife worked outside the home, chances were that she earned less than her husband; so her wages likely went toward day-to-day expenses—like groceries—while his went to pay down the mortgage on the home.



I can see where this is going. When a couple split up, the courts would give each spouse the property he or she owned—which in most cases meant the husband ended up with practically everything.



That's right, and as time changed, people came to see how unfair that was. The situation came to a head in Canada with the Supreme Court's 1973 decision in the famous case of *Murdoch v. Murdoch*. It's that case that you'll be looking at now.



1. Turn to page 460 of your textbook and read the case study *Murdoch v. Murdoch*. When you've read the case, answer textbook questions 1, 3, and 4 that follow it.

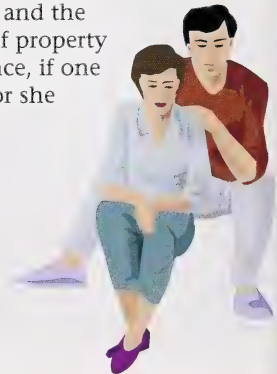
Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

The Murdoch case sparked a strong negative reaction across Canada. People felt there was something wrong with a law that would give a husband everything both spouses had worked for all their lives simply because he alone had earned wages and had registered property in his name. In response to this negative reaction, in the years that followed each province passed legislation establishing fairer methods of dividing married people's property upon separation or divorce. In Alberta, the statute that was passed is the *Matrimonial Property Act*. This means, in effect, that while spouses can own property separately while married, now if the marriage fails and the couple can't agree on who gets what on their own, the courts will do their best to divide things up fairly.

**matrimonial property:**  
property acquired by spouses during their marriage

The legislation states that property acquired by the spouses during their marriage (**matrimonial property**) is to be divided equally, regardless of who paid for it or whose name it's registered in. On the other hand, property owned by the husband and wife before they got married isn't considered matrimonial property and the spouses can each keep their own. There are a few other types of property that aren't considered matrimonial property as well. For instance, if one spouse, while married, gets an inheritance from a relative, he or she can keep possession of it. The same is true of gifts.

While the *Matrimonial Property Act* stipulates that in principle matrimonial property is to be divided up equally, judges are allowed some discretion to give one spouse or the other a greater share if the circumstances seem to warrant it. The legislation lays out a number of factors for judges to consider in deciding precisely how much each spouse is to receive. Some of the most important ones are as follows.



- the contribution each spouse has made to the marriage—including work as a homemaker, parent, and so on
- the contribution each spouse has made to any businesses operated by the family
- the contribution each spouse has made to acquiring or improving their property
- the financial resources of the spouses
- the length of the marriage
- any agreement the couple has arrived at about how they want to divide their property (You'll be looking more closely at this one soon.)
- any gifts a spouse made to a third party (such as a friend or relative) in order to protect his or her property
- any other relevant circumstances



2. Louisa and Tyson are getting a divorce after six years of marriage. They owned very little property when they got married, though Tyson did have a valuable collection of baseball cards. During the marriage, Louisa worked as a receptionist while Tyson was in university studying dentistry, so all the property the couple acquired—a car, furniture, electronic equipment, and so on—were paid for from Louisa's wages. In the last few months of their marriage, Louisa's mother died, leaving Louisa \$25 000 in her will.

According to the principles in the *Matrimonial Property Act*, who's likely to get what if a judge ends up distributing the couple's property?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

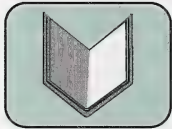
## Spousal Support

**spousal support:**  
money paid by  
one spouse to the  
other after their  
marriage has  
broken down



In Lesson 2 you looked at the issue of child support when marriages break down. Often it's not only the children who need financial help in this situation; frequently one of the separating spouses also needs help. Spousal support has traditionally differed from child support in that it's been expected that a needy spouse will make the necessary effort to get back into the work force and become self-sufficient as soon as possible. Therefore, spousal support in the past has usually been intended to last only a few years.

This is still the case when marriages of only a few years' duration end in divorce. However, in recent years the courts have begun to recognize that, in long-term marriages, often a spouse who has stayed home for many years to raise a family (traditionally it's the wife) has lost the potential he or she once had to be financially successful even if a return to the work force is possible. All those years of developing marketable skills and experience have been sacrificed and can never be replaced. For this reason, in situations like these the courts will now award spousal-support payments that go on for many years—perhaps over a lifetime.



To learn more about spousal support, turn to page 467 of your textbook and read section "15.4: Spousal Support"—ending at the bottom of page 474. Include in your reading the two case studies on pages 470 and 471 (*Moge v. Moge* and *Bracklow v. Bracklow*). When you've completed the reading, answer the questions that follow.

3. In Alberta, what statute governs spousal support in each of the following situations?
  - a. divorce
  - b. separation
4. According to the *Divorce Act*, what are the **four** objectives of a court order requiring one spouse to support the other? (You'll have to read some of the actual legislation to answer this one. This may be a bit challenging; try, if possible, to express the objectives in your own words.)
5. What factors do judges take into consideration in deciding spousal support?
6. Naomi divorced Bill because he'd committed adultery many times during their marriage and had frequently been physically abusive. She claimed that because of his behaviour, Bill should be made to make her support payments for life despite the fact that she was an independently wealthy woman. Would she likely be successful? Explain your answer.
7. Explain the principle established by each of the following cases.
  - a. *Moge v. Moge*
  - b. *Bracklow v. Bracklow*

8. Earlier, when looking at the issue of child support, you were introduced to Alberta's *Maintenance Enforcement Act*. This statute applies to spousal-support orders as well. But the federal government also has legislation in place to enforce maintenance orders. Explain how the federal government's *Family Orders and Agreements Enforcement Assistance Act* helps spouses collect the support awarded them by the courts.



*Family Orders and Agreements Enforcement Assistance Act!* Boy, those lawmakers sure know how to write a catchy title!

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

### Going Further

This website address, which you've been given before, will give you more information on spousal support.

<http://www.canada.justice.gc.ca/en/dept/pub/divorce/index.html>

You can also phone Dial-A-Law and listen to recording 113: The *Matrimonial Property Act*. The numbers to call are, in Calgary, 234-9022, and elsewhere in the province, 1-800-332-1091.

In this lesson you've learned how the courts go about deciding on property division and spousal support upon the breakdown of a marriage. But is there any way for a married couple to decide, while still married, how they want to split their property if they ever break up? As you might suspect, there is; and this is what you'll be looking at in the next lesson.

## Suggested Answers

1. **Textbook question 1:** The three reasons were as follows:

- Mrs. Murdoch had made no direct financial contribution to acquiring the properties.
- Mr. and Mrs. Murdoch had no formal partnership agreement and everything was registered in his name.
- All the work Mrs. Murdoch had done was considered normal for a rancher's wife.

**Textbook question 3:** Answers will vary, but most people regard this decision as unfair since both spouses had worked hard over the years to build up a successful family business. It seems only a technicality that the property was registered in the one spouse's name.

**Textbook question 4:** Again answers will vary, but today most people accept this idea of partnership. Though the spouses contribute in different ways, most people feel they should each share the property owned if the marriage fails. Whatever your ideas are, were you able to explain and defend them?

2. Since Tyson owned his baseball-card collection prior to the marriage, it's not classified as matrimonial property, and he'll be allowed to keep it. (It's interesting to note, though, that if its value increased during the marriage, the increase will be considered matrimonial property and will be divided equally between the spouses.) Similarly, Louisa's inheritance will also be classified as exempt from distribution, and she'll be able to keep it. All the other property the couple acquired during the marriage is considered matrimonial property, and will probably be divided equally even though Louisa paid for it all.

Of course, the judge might look at other factors in this case. For instance, since Tyson will presumably now be able to launch a career as a dentist while Louisa, who supported him through university, will perhaps remain working at a job that pays a good deal less, the judge might decide to give her a greater share of the couple's assets.

3.
  - a. the *Divorce Act* (a federal statute)
  - b. This was a trick question. According to your textbook, the Alberta statute governing spousal support resulting from a separation is the *Domestic Relations Act*; however, in 2005 a new statute was proclaimed in Alberta that, among other things, replaced the *Domestic Relations Act*. This new *Family Law Act* is now the provincial legislation that governs spousal support in Alberta when couples separate rather than divorce.
4. To answer this question, you had to go directly to the excerpt from the *Divorce Act* on page 468 of the textbook. The four objectives are as follows:
  - to recognize any economic advantages or disadvantages resulting from the marriage breakdown
  - to divide between the spouses financial consequences resulting from child care over and above child-support payments
  - to relieve economic hardship resulting from the collapse of the marriage
  - to promote the economic self-sufficiency of each spouse in a reasonable length of time
5. Judges take these factors into consideration:
  - the financial assets of each spouse (including earning power now and in the future)
  - the ability of the spouses to be self-supporting
  - the ability of the spouses to support each other
  - the age and health of the spouses
  - the duration of the marriage (and/or cohabitation)
  - the time the spouse in need will take to upgrade job skills
  - the time one spouse raised the family rather than working for money



6. No, she'd likely fail in this claim because the *Divorce Act* doesn't recognize fault as a basis for working out support payments. Rather, it uses the need of one spouse and the ability of the other to pay.
7.
  - a. The case *Moge v. Moge* established the principle that the goal of making each spouse self-sufficient, while important, isn't primary. Rather, all four factors (see question 4) are to be taken into account in determining spousal support.
  - b. The *Bracklow v. Bracklow* case established the (rather controversial) principle that a person who was married and who can no longer be self-sufficient can be entitled to support—though not necessarily indefinitely—from a spouse who can afford to supply it.
8. The federal *Family Orders and Agreements Enforcement Assistance Act* allows for searches to be made for missing spouses using federal data banks and records of Canada Pension Plan contributions and social insurance benefits along with Canada Revenue Agency records. This makes it harder for spouses ordered by the court to make support payments to simply disappear. The legislation also allows authorities to deduct certain federal monies payable to debtors (for example, income-tax refunds) and to refuse applications for documents like passports.

Despite this statute, it's provincial legislation—like Alberta's *Maintenance Enforcement Act*—that's most useful in enforcing support payments.

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## Lesson 4: The Marriage Contract



Do you remember reading in Lesson 3 that judges distributing property under the *Matrimonial Property Act* take into account any agreements the couple have reached about how they want their property divided up if their marriage fails? Today more and more married couples are writing contracts—either before they get married or after—regulating various aspects of their marital relationship. Most important among these aspects that spouses can include is property division.

**marriage contract:** a contract between spouses outlining their obligations to each other and the ownership of their property

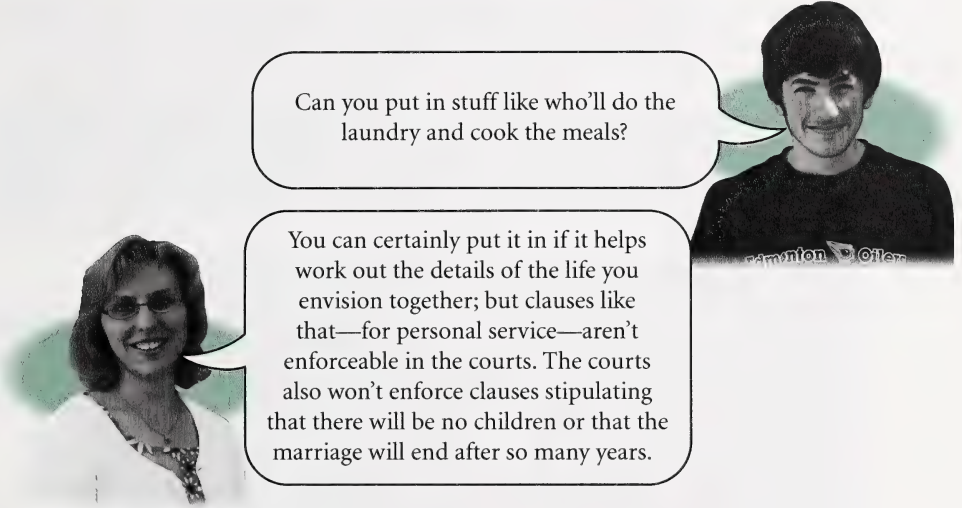
Marriage contracts have been around for quite a while, but they're becoming increasingly popular as more and more couples are becoming aware of the potential problems that can arise in a marriage. Rather than fighting over things down the road, they're deciding to draw up a legally binding agreement outlining their responsibilities and duties as a married couple. Of course, marriage contracts aren't a requirement of getting married, but many couples these days seem to think they're a good idea.



1. Before investigating marriage contracts any further, take a few minutes and try to think of the advantages and disadvantages of having one. Construct a chart with two columns—one for advantages and one for disadvantages—and fill it in as you get ideas. If possible, work with a study partner or classmates to brainstorm ideas.



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

When couples draw up marriage contracts, they can put into them all sorts of things over and above how property will be divided if the marriage ever fails—though not everything will be enforced by the courts. For example, they can include household arrangements (who is to be responsible for what in running the home), how their individual salaries are to be used, and how property will be shared during the marriage. They can even include such things as an agreement that the wife won't have an abortion before having a specified number of children or without her husband's consent, or that both spouses will strive to work outside the home.



- 
- 
2. Imagine that you're about to get married. Try to draw up a contract including all the things you'd want agreed upon with your spouse-to-be before tying the knot. If you have a friend or classmate you feel comfortable with in a situation like this, pretend you're getting married and work out the contract between yourselves. Normally a contract of this sort is a very formal legal document, but for the purposes of this question don't worry too much about that aspect of things; rather, concentrate on content—what you'd like to include in the contract.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

The focus of this section is marriage breakdown, so the question emerges as to just what agreements about property distributions and support a married couple can come to in a marriage contract that the courts will enforce in the case of separation or divorce. The fact is that a husband or wife can agree to give up his or her rights under the *Matrimonial Property Act*. For the courts to agree, however, the following points must all hold true:

- The contract must be in writing.
- Both parties must have agreed to the contract of their own free will.
- Both parties must have consulted separate lawyers before giving up their rights.



This means, for instance, that a husband could agree in the marriage contract that all property paid for by his wife during the marriage would remain hers if they divorced, even though ordinarily it would be divided between them as matrimonial property. If an arrangement is made concerning support payments, however, the courts may override it if it seems grossly unfair. This is especially true in the case of child support, where the child's interests always come first.

3. When Lionel and Johanna got married, they drew up a marriage contract in which Johanna agreed to give up all her rights to spousal support should the couple ever break up. Because Lionel was a law student, he assured her he knew what he was doing; he drew up the contract and both he and his wife signed it. If the couple ever divorces, will the courts enforce the terms of this contract? Explain your answer.
4. Sven and Loretta draw up a marriage contract in which they agree that each spouse will keep any property he or she paid for if their marriage ever ends. If they want the courts to honour this agreement, what steps should they take when entering into the contract?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

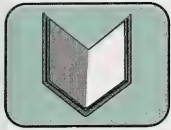
**consideration:**  
*something of value exchanged by the parties to a contract*

If you took Legal Studies 1010, you'll remember that ordinarily the courts will enforce a contract only if each party receives something of value from it. This is called **consideration**. This principle means that any marriage contract must give each party something in return for the rights he or she gives up. A contract in which only one party gives up rights—for example, one in which the wife alone agrees not to seek support payments—won't usually be enforceable. You'll also remember from Legal Studies 1010 that a contract can be ended if both parties agree and simply tear it up.



If you ever do write up a marriage contract, remember that it's a legal document that someday may be taken very seriously by the courts. You must get independent legal advice—even though this can be awkward when you're contracting with someone you presumably love and trust.

Be very clear about any rights you're giving up, and be sure to review the contract from time to time with your spouse and make any needed changes to it as your situation or lifestyle changes. What seems appropriate when you're young, healthy, and childless may seem entirely out of place later in life.



To learn more about marriage contracts, turn to page 480 in your textbook and read the material in section “15.6: Domestic Contracts” as far as the heading “Cohabitation Agreement” in the middle of page 482. Then answer the following questions.

5. Your textbook tells you that traditionally domestic contracts of all sorts haven't frequently been recognized by the courts but that this is no longer true. Suggest a reason to explain why this change would have occurred over the last couple of decades.
6. While marriage contracts can cover a variety of topics, the textbook focuses on financial arrangements should the marriage fail. Explain **three** reasons why, according to the textbook, this can be useful.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



### Going Further

The Dial-A-Law recording 127: *Marriage Contracts* will give you more information about the material covered in this lesson. Once again, in Calgary call 234-9022 while elsewhere in Alberta the toll-free number is 1-800-332-1091.

And that completes your brief look at marriage contracts. As you may have noticed in your last textbook reading, unmarried couples living together can also draw up contracts similar to marriage contracts; this is something you'll be looking at in the next section.

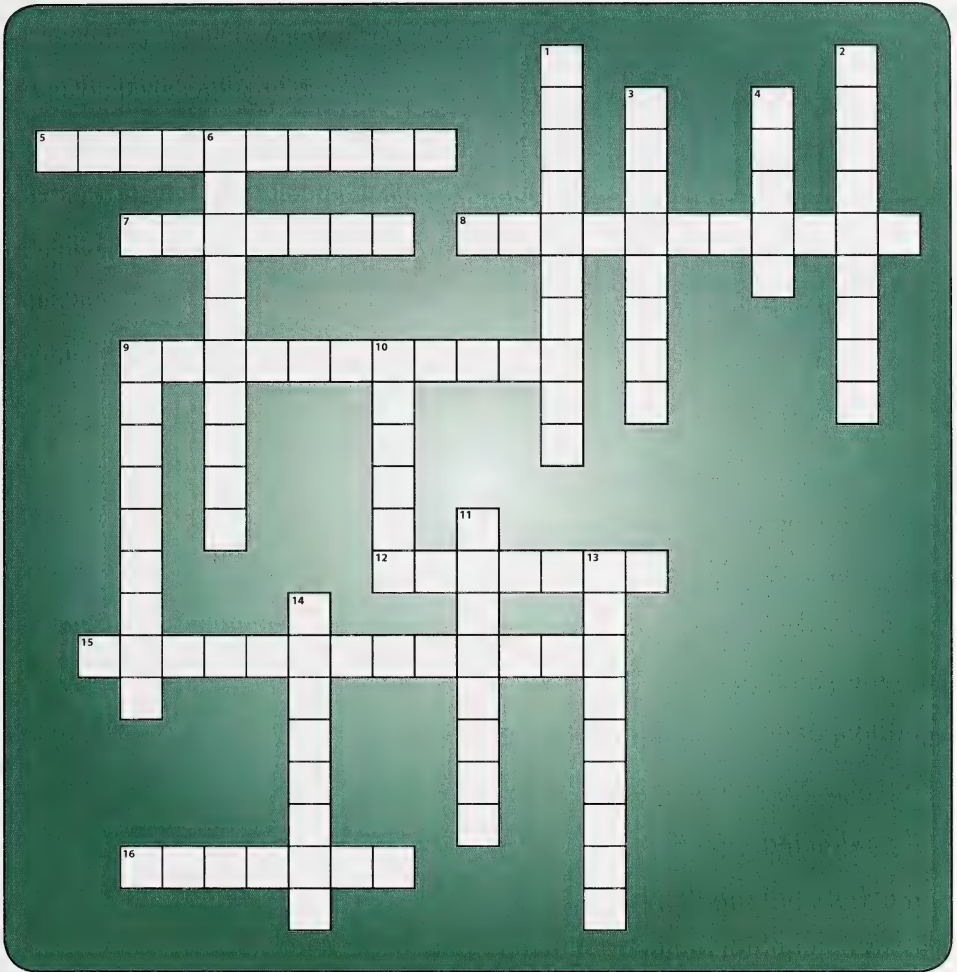
7. Before finishing up Section 2, try the crossword puzzle that follows. It will test you on terminology used throughout the section—not just in this lesson. Be sure to review any terms that you're not sure about.

## Across

5. A(n) \_\_\_\_\_ agreement allows a married couple who no longer wish to live together to legally work out their rights and responsibilities.
7. Parents given the right to have their children live with them after a divorce are said to have \_\_\_\_\_ of them.
8. Property acquired during a marriage is called \_\_\_\_\_ property.
9. If one spouse forgives another for behaviour that could be considered grounds for divorce, the courts may consider this to be \_\_\_\_\_.
12. \_\_\_\_\_ support is financial aid given by one party in a divorce to the other.
15. If any contract is to be enforced by the courts, there must be \_\_\_\_\_ given by each party to the other.
16. The only way to end a legal marriage is through \_\_\_\_\_.

## Down

1. The person applying to the courts for a divorce is called the \_\_\_\_\_.
2. \_\_\_\_\_ by a neutral third party can help couples work out the arrangements when a marriage breaks up.
3. A person with the freedom to move around the country and live in different places is said to have \_\_\_\_\_ rights.
4. \_\_\_\_\_ custody is granted when both ex-spouses share the responsibility of raising their child.
6. A(n) \_\_\_\_\_ is a defendant in a divorce case (the person from whom the petitioner is seeking a divorce).
9. \_\_\_\_\_ has taken place when a husband and wife seeking a divorce agree to lie to the court.
10. A non-custodial parent is usually given \_\_\_\_\_ to his or her children.
11. Married couples sometimes enter into a marriage \_\_\_\_\_ with each other to set out the terms of their relationship.
13. If a marriage is determined never to have legally existed, a(n) \_\_\_\_\_ is granted by the courts.
14. \_\_\_\_\_ is one indication the *Divorce Act* recognizes that a marriage has broken down.



Turn to the Suggested Answers at the end of this lesson and compare your puzzle with the one given there.

### Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 3.

# Suggested Answers

1. Charts will vary. Compare yours with the one that follows.

Marriage Contracts	
Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Each partner gets the chance to learn the ideas of the other about such things as children, careers, goals, and money management.</li><li>• The contracts can be useful in working things out if the marriage breaks down.</li><li>• If set up properly, the contract can be a legal document used for such things as dividing property and determining support payments if the marriage breaks down.</li><li>• It spells out just what each spouse expects of the other in many aspects of their marriage.</li><li>• It can prevent one spouse with a lot less money than the other from trying to divide assets evenly in the event of a breakup—and so make an easy fortune.</li><li>• It can allow a previously married spouse to preserve assets for children from the previous marriage.</li></ul>	<ul style="list-style-type: none"><li>• Spouses may agree to things they later regret.</li><li>• Setting up a contractual relationship between husband and wife can detract from the emotional relationship that forms the basis of marriage.</li><li>• Entering a marriage with the idea that it may someday end in disputes over property and support payments can undermine the sense of commitment on which any marriage should be based.</li></ul>

Did you think of other ideas?

2. Everyone's contract will be different. Many students find themselves including clauses about who will take out the garbage and change the babies' diapers. While agreements on things like this can be useful in delegating household tasks, exchanging ideas, and letting each partner know what the other expects, they won't be enforceable in the courts.

Also, as noted in the question, a real marriage contract should be a formal legal document, and a couple wishing to create one should get legal advice. Many people think, however, that taking steps like this will likely set the marriage off on the wrong track right from the start. What are your ideas?

3. No, the courts likely won't enforce the contract's terms because Johanna never consulted an independent lawyer and was unduly influenced by her husband. As well, the courts may override unreasonable terms (like giving up all rights to spousal support) if they're likely to cause real suffering.
4. The couple should consult independent lawyers separately, put the contract in writing, and make certain that each spouse enters into the contract of his or her own free will.

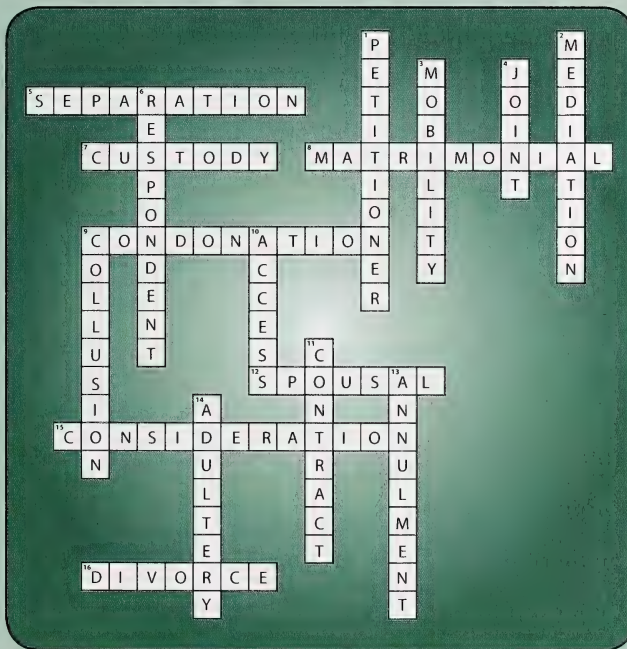


5. In the past, courts hesitated to recognize domestic contracts because legal authorities felt that recognizing contracts of this sort would threaten the stability of marriage and the family. It's likely that things have changed because so many more marriages end in divorce and frequently, the fighting over the division of assets becomes bitter. Surely it's better to enforce a document the couple created while still on good terms—and while in consultation with their own lawyers—than to let bitter squabbles aggravate what is likely already an unpleasant situation.

6. The three reasons presented in the textbook are as follows:

- One partner may have a great deal more money than the other and may not want to risk losing half of it in a divorce settlement.
- A spouse from a previous marriage may want specific assets to go to children of that marriage.
- Marriage contracts are useful for dividing assets acquired by each spouse while married rather than having them all lumped together as matrimonial property.

7.



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## Section 2 Conclusion



In this section you've looked at some of the serious legal aspects of marriage breakdown. You've learned about the different ways in which a couple can put an end to their relationship, and you've investigated how the courts deal with questions related to property and children when a marriage ends. You've also looked at marriage contracts and discovered their potential role in regulating various aspects of a marriage as well as what will happen if the relationship ends.

Of course, not all couples who want to share their lives get married. Some choose to live as husband and wife without ever tying the legal knot. The laws governing this sort of relationship are rather different from those governing married couples—though not as different as they once were. It's these laws that you'll be investigating in the next section.

# SECTION 3

## Family Law—A Broader Perspective



You're probably very much aware of the fact that these days more and more couples are deciding simply to live together rather than to get married. You're likely also aware of the problem of abuse within families, and you may know of some of the services available to people with difficult family situations. But are you aware of grandparents' problems in gaining access to their grandchildren if these children's parents get divorced? How about the debate over legally requiring people to support their elderly parents?

Section 3 will investigate a number of issues like these, focusing, of course, on their legal aspects. When you've finished this section you should be able to explain the legal differences between marriage and cohabitation (living together as a couple), to identify laws and services designed to protect people from abusive family situations, and to describe some of the legal issues involving the extended family.

## Lesson 1: Cohabitation Versus Marriage



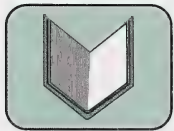
**cohabitation:**  
the state of living  
together as spouses  
though not legally  
married

You probably know couples who have decided simply to live together rather than to get married. If you're an older student, it's possible that you may yourself live in this sort of arrangement. One term for relationships of this sort is **cohabitation**, though many people call it living "common-law" or having a "common-law marriage"—expressions you read about in Section 1: Lesson 2. Traditionally, cohabiting couples have avoided most of the legal obligations of married people, though this also means, of course, that they haven't enjoyed the rights and benefits conferred by marriage either. Recently, however, this situation has been changing—as you'll discover as you work through this lesson. The changes in Alberta are especially significant.

To begin, it would be a good idea to go back to page 385 of your textbook and reread "Looking Back: Common-Law Marriages." Then answer the following questions.

1. Why are expressions like *common-law union* or *common-law relationship* more accurate than *common-law marriage*?
2. Why do you think so many couples are opting for cohabitation arrangements these days rather than actually getting married? Try to come up with at least **two** or **three** reasons.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.





## Going Further

What are your own views on cohabiting? Though the emphasis in this course will be on the legal aspects of this sort of arrangement, at this point, feel free to present arguments for or against cohabiting based on practical, moral, cultural, and religious grounds. Draw up your ideas in a position paper a page or two in length.



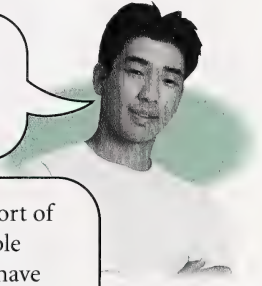
## The Rights of Cohabiting Partners: An Introduction

In Section 1 of this course you learned some of the basic rights and obligations of married people, and in Section 2 you saw how issues like property division, child custody, and support are dealt with when marriages break up. But what about the responsibilities and rights of people who aren't legally married but who, in every other respect, are living as husband and wife?



The rights of cohabiting partners vary depending on which province in Canada they happen to live in. In some provinces, if couples have lived in a stable common-law relationship for a certain amount of time, they do acquire some of the rights and obligations of legally married people. Alberta, as you'll see, has gone further than many provinces in this direction.

So you're saying that after high school if I moved in with my girlfriend, I might accidentally take on some legal obligations to her—like providing necessities or dividing some of our property if we split up?! That's a scary thought.



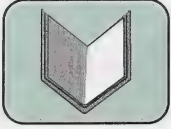
It's not quite that simple; note that this sort of thing happens only in long-term, stable relationships—or in relationships that have produced children. A casual, childless arrangement lasting a year or two won't affect your legal status. And if you're just sharing an apartment to save money but living separate lives, you have nothing to worry about. But it's very important to know what you might be getting into should you end up cohabiting for an extended period.



So the days are gone when you could just refuse to marry your partner in order to avoid any responsibilities? Cool!



## Going Further



This lesson will focus on the situation in Alberta. If you'd like a broader perspective—as well as some of the history in the development of rights for cohabiting couples, read pages 475 to 479 of your textbook. Take special note of the precedent-setting case *Pettkus v. Becker* on page 476.

## The Situation in Alberta

**will:** a legal document a person draws up to specify how his or her property is to be distributed at death

**estate:** the entire collection of assets a person owns at death

Until recently, cohabiting couples in Alberta had relatively few rights. They did have some claim for support from their partners if they'd lived together as a couple for many years or had a child, but compared to married couples their rights were very limited. For example, if partners in a common-law relationship died without a **will**, their **estates** went to their closest relative, not their partners.

Situations like this meant that people in common-law relationships had little legal protection. It was far too common for one partner to be left penniless if the other one died or simply walked out the door one day.

Statutes like the *Dependants Relief Act* (or rather, its predecessor, the *Family Relief Act*) and the *Domestic Relations Act* (now replaced by the *Family Law Act*), designed to offer protection in some situations like this, applied chiefly to spouses. Cases like *Pettkus v. Becker* (see page 476 of your textbook) eventually offered some protection, but most people felt it wasn't nearly enough.

## The Adult Interdependent Relationships Act

In June 2003, a new law came into effect in Alberta: the *Adult Interdependent Relationships Act*. This statute was introduced principally to redress the problems in cohabitation arrangements as described in the preceding paragraphs, though the net was cast even wider than this.

Now, in Alberta, partners who meet certain criteria explained in the legislation qualify as *interdependent partners*, and they have many of the rights and obligations of married couples. The most interesting thing of all, perhaps, is that it isn't only cohabiting male/female couples who can meet these criteria. Any two people, regardless of their genders and whether they're related or unrelated, can qualify—though the rules differ slightly in some cases.



According to the *Adult Interdependent Relationships Act*, a partnership can qualify as an interdependent relationship if it exists outside of marriage and the partners

- share each other's lives
- are committed to each other emotionally
- function as an economic and domestic unit

As well, the couple must have done at least one of the following three things. They must have

- lived together interdependently and continuously for three years or more

**or**

- lived together interdependently and with some degree of permanence and have a child (either by adoption or birth)

**or**

- drawn up and signed a legal document called an *Adult Interdependent Partner Agreement*

There are several points worth noting here:

- There are, in a way, two types of adult interdependent relationships—those created automatically by living together for a set period of time as an economic and domestic unit and/or having a child and those created formally by signing an agreement. The rules can vary somewhat for each type of relationship.
- If two relatives are living together and wish to acquire the rights and obligations of adult interdependent partners, they're required to complete and sign an adult interdependent partner agreement. Simply living together for three years won't be enough.
- An interdependent relationship can't exist when either partner is married to, or still in a valid adult interdependent relationship with, someone else.
- If it can be proven that a person signed an adult interdependent partner agreement under duress or because of fraud or **undue influence**, the agreement won't be valid.



**undue influence:**  
unfair pressure to do something that is put on someone by another party in a position of authority, power, or seniority

## Going Further

If you have access to the Internet, go to this address, which is part of the website operated by Alberta Justice. You'll be able to see, among other things, a sample of an adult interdependent partner agreement.

<http://www.justice.gov.ab.ca/publications/default.aspx?id=3550#four>





What about people under the age of 18? Can they form adult interdependent relationships?



Yes, but they can't sign an adult interdependent partner agreement without the written consent of a parent or guardian.

3. Based on the material you've just read, decide which of the following couples would qualify as having a valid adult interdependent relationship. For each one that, in your opinion, fails to qualify, give your reasons. If you've taken Legal Studies 1010, this should be pretty familiar territory for you.
- a. Arianna is legally separated from her husband and has recently moved in with Josh. She and Josh have signed an adult interdependent partnership agreement.
  - b. Mr. Bailey, a lifelong bachelor, lives with his widowed sister Mrs. Falkner. Both are in their eighties and depend on each other financially and emotionally. They've maintained this arrangement for five years.
  - c. Hannah and Anthony are both adults and have cohabited for two years. They have one child and share a rich life together, acting as a unit financially and supporting each other emotionally.
  - d. Keung and Mei have cohabited for six years, during which time they've lived for all intents and purposes as man and wife. Now Keung wants to leave Mei and marry another woman. He's told Mei that he has no responsibilities toward her because they never got married.
  - e. Marissa and Olivia are a same-sex couple who have recently moved in together. Because they feel committed to each other, share each other's lives, and function as a domestic unit, they've signed an adult interdependent partnership agreement.




Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.




I can see a few problems with this law. It's easy to say whether or not a couple have lived together for three years or have children, but some of the other rules are pretty fuzzy. I mean, how can a court decide whether a couple is committed to each other emotionally or whether they're functioning as an economic and domestic unit?



You've raised a good point. If a case came to court, the judge would have to decide on questions like these in order to deliver a judgement. As an example, let's focus on the question of whether or not a couple is an economic and domestic unit.

- 
4. Suppose you were the judge in a case where you had to decide if a couple met the criteria of an adult interdependent relationship. Suggest some of the things you'd look at in deciding to what degree they'd functioned together as an economic and domestic unit. If possible, brainstorm ideas in your classroom or with a study partner.



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

## Ending an Adult Interdependent Relationship

Because partners in adult interdependent relationships have never been legally married, they can end their relationship more easily than a married couple can. However, it's not as basic as simply walking out the door—as it once was in the case of common-law unions. If a couple in an interdependent relationship agree to split up, probably the most clear-cut way of ending the relationship is to sign a written agreement together to the effect that the relationship is over. This is especially useful when the relationship was created by way of an adult interdependent partner agreement. Of course, another way for a couple to end their adult interdependent relationship is to marry each other—or for one of the partners to marry someone else.

But what if only one partner wants to end the relationship? In this case, the other partner can simply move out and the two can live separate and apart for a year. (If necessary, they can still share the same home as long as they live separate lives.) At the end of that time, the relationship will no longer exist.



Remember that an adult interdependent relationship can be formally created by way of signing an adult interdependent partner agreement on the one hand or simply by living together long enough—or by having a child together—on the other hand (assuming the couple share each other's lives, are committed, and function as a unit). Relationships formed in this latter way can be ended if either partner makes an adult interdependent partner agreement with a third person, but relationships formed by an adult interdependent partner agreement themselves cannot be ended this way.

5. Justine and Logan have lived together for two years in every way as a domestic couple, and they have one child, though they've never signed an adult interdependent partner agreement. Now Justine has taken her child and moved in with another man, Luke. Is her adult interdependent relationship with Logan ended? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

## Rights and Obligations of Cohabiting Couples in Alberta



You now know how adult interdependent relationships are formed and how they can be ended, but just what rights and obligations do adult interdependent partners have? The following discussion will outline a few of them. Because the focus here is Alberta, the term *adult interdependent partners* will usually be used, but remember that some of the laws involved are federal and apply to cohabiting couples across the country.

## Support

You'll recall from Section 1 that the *Criminal Code* (a federal statute) imposes a duty on spouses to provide each other with life's necessities—food, clothing, and shelter. Couples who cohabit are under no such obligation to each other under the *Criminal Code*. In Alberta, however, adult interdependent partners are obligated to support each other financially. The *Family Law Act* allows an adult interdependent partner to apply—just as a spouse would—for a support order if the relationship has broken down.

## Property

In any common-law relationship, each partner keeps his or her own property. Whatever each of them brings into the relationship or buys while in it, he or she can keep when they split up. If they split the cost of an item, each one should receive the value for what he or she contributed. As you saw when reading the case *Pettkus v. Becker*, people can successfully sue their partners for a fair share of the family assets but they have to prove their case. There's no automatic right. Normally a court considers factors like the length of the relationship, the contributions each partner has made, and any intentions the couple clearly seemed to have to share the property when they bought it.

It's also important to note that the *Dower Act* still applies only to married people. In other words, there's no way for one interdependent partner to stop the other from selling the matrimonial home or bequeathing it in a will. However, under Alberta's *Family Law Act*, in making a support order a court has the power to grant either partner exclusive possession of the home as long as it's deemed necessary.



So if my partner and I bought, say, some kitchen appliances, and it was obvious that we intended to share them even though he paid for them, I might be able to sue him for half the value?

Perhaps, but if you ever find yourself in this situation, be sure to see a lawyer. Things can get complicated very quickly.



## Inheritance

Before the implementation of the *Adult Interdependent Relationships Act*, people in common-law relationships who wanted to ensure that when they died their partners would inherit from their estates had to write legally valid wills that specifically named their partners and stipulated what they were to inherit. Otherwise, the estate would go to the deceased partner's nearest relative. Now, however, things have changed.

**intestate:** lacking a will at death

Today in Alberta, as you saw earlier in the course, if people die **intestate**, their estates are divided up according to specific guidelines, and these guidelines ensure that spouses and interdependent partners are treated equally. Whether you're a bereaved spouse or interdependent partner, you'll receive the first \$40 000 of the estate, after which you'll share it with your children. And even if your deceased interdependent partner had drawn up a valid will but failed to leave you adequate funds, you can make a claim for a share in the estate under the *Dependants Relief Act*—just as a spouse can. If you're successful, your claim will override the wishes of your deceased partner as expressed in the will. As noted earlier, however, the protection offered spouses by the *Dower Act* doesn't apply to adult interdependent relationships; if one partner owns the family home, he or she can will it to another.



That's good about a partner sharing in the estate if there's no will. My parents knew a couple who were living together for years but hadn't married because the man had never divorced his first wife. When he died without a will, just about everything he owned went to his legal wife even though he couldn't stand her.



Yes, that wouldn't happen now—though according to the *Dower Act*, his legal wife could remain in the house if technically it was the "matrimonial home." Something else to remember about wills: if you already have a will and you get married or sign an adult interdependent partner agreement, your will is automatically revoked; in other words, it no longer has any effect.



That's cool. That gives even more protection to the partner you're actually living with.



True, but bear in mind that this won't happen if you create an adult interdependent relationship by living with your partner for three years or by having a child. You must sign an agreement.

6. a. Anna and Yuri are partners in an adult interdependent relationship. Yuri was married at one time, but his wife died. He has two children from that marriage, but he isn't on speaking terms with them. When Yuri dies intestate, the children from his marriage believe that they'll receive his entire estate. Are they right? Explain your answer.
- b. What would have happened in the preceding question if Yuri had made a will while married leaving his estate to his wife and children and had never taken steps to revoke it?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Children

The natural parents of a child have a legal obligation to provide for that child. If children are born from a casual relationship, their mother is considered their sole legal guardian. If children are born to a couple who were together for more than a year, both parents are considered legal guardians if the father acknowledges that he is, in fact, the father. If the couple breaks up, the father can apply to the courts for a "parenting order," however, and the best interests of the child will determine the judge's decision. While the couple is together, if the father signs a document called an *Acknowledgment of Paternity*, the children become legitimized and can bear his name.



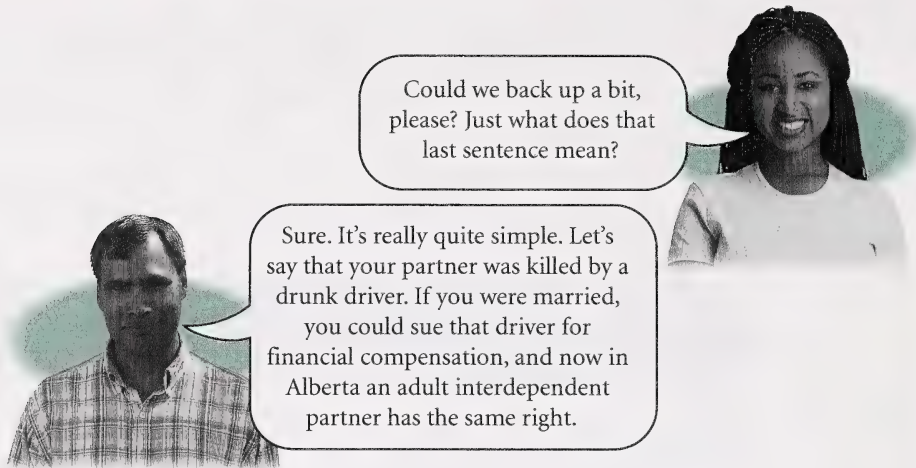
Since both parents have an obligation to provide for their children under the age of 18, if the relationship breaks up, one parent may be required to make child-support payments to the other.

## Pensions, Benefits, and Insurance

As long as the relationship is considered to be long and stable, the *Canada Pension Act* (a federal statute, as its name should tell you) will allow a cohabiting partner to claim a pension or death benefits if his or her partner dies. Similarly, the *Employment Insurance Act* (another federal statute) recognizes the right of common-law partners to benefits—as long as the relationship has lasted for a set period of time, the duration of which varies in different parts of the country.

Alberta's *Workers' Compensation Act* has been amended to include adult interdependent partners. This allows a person to be treated as a spouse—and claim financial compensation—if his or her adult interdependent partner dies in a work-related accident. Similarly, adult interdependent partners can register together as a family for coverage under Alberta Health Care. They're also eligible for insurance coverage—things like life insurance and motor-vehicle insurance—that previously had been available only to spouses. Another benefit now conferred on an adult interdependent partner is the ability to sue for damages in the event of the "wrongful death" of the other partner.

**damages:** money awarded by a court to a plaintiff in a civil action to compensate for a wrong suffered



7. Riley and Shannon had been living together for three months and had no children. Riley, a construction worker, was killed on the job when the scaffolding he was standing on gave way.
- Is it likely that Shannon will be able to make a successful claim for compensation through the Workers' Compensation program? Explain your answer.
  - If it appears that Riley's death was due to the negligence of his employer (perhaps because of lax safety standards or faulty scaffolding), is it likely that Shannon will be able to successfully launch a legal action in the courts for damages? Why or why not?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Cohabitation Agreements

Until Alberta's *Adult Interdependent Relationships Act* came into effect in 2003, cohabiting couples in Alberta had few rights as compared with married couples. For this reason, many couples living "common-law" decided to build rights and obligations into their relationships by way of a contract like the marriage contract you looked at in Section 2. Even though the new law offers a great deal more protection to cohabiting couples, many people still think it's a good idea to draw up a **cohabitation agreement** just as it can be useful to spouses to have a marriage contract.



**cohabitation agreement:** a contract between cohabiting partners outlining their obligations to each other and the ownership of their property; sometimes called a cohabitation contract

A cohabitation agreement is, as you might suppose, simply a contract that works and looks much like a marriage contract but which is drawn up between a couple in a common-law relationship. Just as with marriage contracts, couples can include anything they want in their cohabitation agreements, bearing in mind that the courts won't enforce everything. Still, putting agreements like this down on paper can help common-law couples structure their relationships, and, if the contracts are done properly, the courts are willing to regard them as legal documents in some situations. And even if they aren't strictly enforced, judges do consider them in making their final decisions—should things ever end up in the courts.

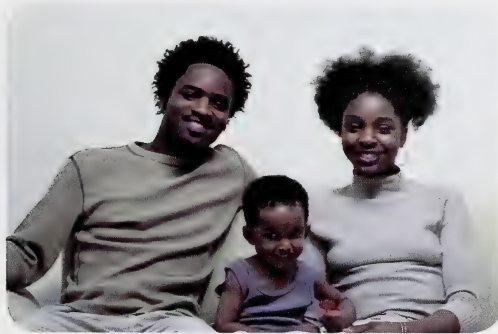
If they're ever to be considered legally binding, cohabitation agreements must follow the normal rules of contract law: each party must receive something of value (consideration), and the contract should be written out. If you're serious about creating a legal document, it's always best to get a lawyer's help.



Cohabitation agreements can be valuable in working out property ownership, support obligations, and the custody and upbringing of any children resulting from the relationship. Remember, though, that if a battle over children or child support ends up in the courts, judges will always put the children's best interests over the wishes of their parents as expressed in agreements of this sort.

8. If friends of yours were thinking of entering into a common-law relationship, would you recommend that they draw up a cohabitation agreement? Explain why or why not.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



To finish up this lesson, here's a chart that should simplify some of the material presented within it. In point form, the chart compares marriage, traditional common-law cohabitation, and cohabitation as adult interdependent partners in Alberta.

## Marriage/Cohabitation—Rights and Obligations

	<b>Marriage</b>	<b>Traditional Cohabitation</b>	<b>Adult Interdependent Partners</b>
<b>Necessities</b>	Each spouse has a duty to provide the other with life's necessities.	Partners are under no obligation to provide for each other.	Each partner has a duty to provide the other with life's necessities.
<b>Property</b>	<ul style="list-style-type: none"> <li>• During the marriage, each spouse can own property individually.</li> <li>• Upon divorce or legal separation, if spouses cannot reach agreement, the court will divide matrimonial property as fairly as possible.</li> </ul>	<ul style="list-style-type: none"> <li>• During the relationship, each partner owns what he or she brought into the relationship.</li> <li>• If the relationship ends, the partners keep their own property, though one may successfully sue the other if a case can be established.</li> </ul>	<ul style="list-style-type: none"> <li>• During the relationship, each partner owns what he or she brought into the relationship.</li> <li>• If the relationship ends, the partners keep their own property, though one may successfully sue the other if a case can be established.</li> </ul>
<b>Inheritance</b>	<ul style="list-style-type: none"> <li>• If either spouse dies without a will, his or her property goes to the other (to be shared by any children if the estate is large enough).</li> <li>• Dependent spouses will inherit from the other's estate even if the will leaves everything to other people.</li> <li>• Each spouse has rights in the family home.</li> </ul>	<ul style="list-style-type: none"> <li>• A partner has no rights to the estate of the other unless named specifically in the will.</li> <li>• Neither partner has an automatic right in the family home.</li> </ul>	<ul style="list-style-type: none"> <li>• If either partner dies without a will, his or her property goes to the other (to be shared by any children if the estate is large enough).</li> <li>• Dependent partners will inherit from the other's estate even if the will leaves everything to other people.</li> <li>• Neither partner has an automatic right in the family home.</li> </ul>
<b>Debt</b>	A spouse isn't responsible for the other's debts unless he or she has co-signed for them.	A partner isn't responsible for the other's debts unless he or she has co-signed for them.	A partner isn't responsible for the other's debts unless he or she has co-signed for them.
<b>Children</b>	Spouses have an obligation to support their children.	Partners have an obligation to support their children.	Partners have an obligation to support their children.



And that's your look at the legal aspects of cohabitation as opposed to marriage. It seems that our society is becoming far more accepting of common-law unions than it once was, which explains in part Alberta's *Adult Interdependent Relationships Act*. But marriage still confers special rights and obligations that can't be acquired out of wedlock.

The quest of unmarried couples for rights similar to those of married people has been an ongoing issue for a number of years now, though currently most media focus is on the closely related issue of same-sex marriages. The fact that same-sex couples can qualify as adult interdependent partners in Alberta reflects the gradual liberalization of the law; this is a process you should keep an eye out for as you follow discussions of legal developments in the news media.

## Going Further

To learn more about Alberta's *Adult Interdependent Relationships Act*, take a look at these websites. They offer lots of practical information in an easy-to-understand question-and-answer format. The second address is part of the Alberta government's official Department of Justice website.

<http://www.law-faqs.org/ab/inter.htm>

<http://www.justsolgen.gov.ab.ca/home/default.aspx?id=3550#eight>



## Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer question 1.

## Suggested Answers

1. So-called *common-law unions* aren't actually marriages. For this reason, the expression *common-law marriage* is a bit misleading.
2. Answers will vary. Here's one student's list with which you can compare your own.
  - Cohabiting involves less commitment, so it's less frightening.
  - Cohabiting allows people to keep their freedom; if things don't work out, they can just go their separate ways.
  - Cohabiting is simple; there's no big ceremony and other fuss.
  - Cohabiting is cheap compared to having a wedding.
  - Cohabiting gives a couple a chance to see if they can really live together before actually getting married.
  - Cohabiting is a way to avoid decision-making.

Did you think of other ideas?

3. **a.** This isn't a valid adult interdependent relationship because Arianna is still legally married to her husband.
- b.** This isn't a valid adult interdependent relationship because relatives can create such a relationship only by signing an adult interdependent partner agreement.
- c.** The courts would probably consider this to be a valid adult interdependent relationship. The couple have been together for a significant time and have a child. They are emotionally committed and operate as a family unit.
- d.** Keung is likely in for a surprise. His cohabitation with Mei meets all the requirements for a valid adult interdependent relationship.
- e.** This relationship likely wouldn't qualify simply because of that word *recently*. If the couple continues to live this way for three years, they'll qualify.
4. Answers will vary. Following are some of the factors the legislation instructs judges to consider:
- whether the couple have a conjugal (or sexual) relationship
  - whether one or both partners has interdependent relationships with other people
  - how the couple live together; for example, sharing rooms and household chores
  - the degree to which the couple appear to others as an economic and domestic unit
  - the extent to which the couple have formalized their relationship—for example, providing for each other in their wills
  - the degree to which they share financial commitments—for example, joint bank accounts and the provision of health benefits for each other
  - the degree to which the couple are financially dependent on each other
  - the way the couple might care for and support children
  - how the couple buys, owns, and makes use of property

Did you think of other possibilities?

5. No, by living together as a couple for a significant time and having a child, Justine and Logan have created a valid adult interdependent relationship. If Justine signs an adult interdependent partner agreement with Luke, or lives separate and apart from Logan for a year, she will have ended her relationship with Logan. Similarly, if she marries Luke, the relationship with Logan will be terminated. But just moving in with Luke won't immediately affect the legality of her relationship with Logan.
6. **a.** No, Yuri's children are wrong. As Yuri's valid adult interdependent partner, Anna stands to inherit the first \$40 000 of Yuri's estate, and she'll share any remaining portion with Yuri's children.
- b.** The answer to this question depends on whether or not Anna and Yuri signed an adult interdependent partner agreement. If they did, then the will that Yuri made when married will be revoked. If not, it will still be in effect, and Yuri's estate would go to his children at his death.

7. **a.** No, Shannon's claim wouldn't be successful. Her relationship with Riley hasn't met the criteria necessary to create a valid adult interdependent relationship.
- b.** No, again Shannon wouldn't be able to sue Riley's employer and for the same reason as 7.a.
8. Answers will vary. Probably most of the pros and cons of marriage contracts apply to cohabitation agreements, though it could be argued that since common-law partners still have fewer automatic rights than spouses, it's more important for them than for married couples to draw up a contract. But if what the partners want is a commitment-free relationship, of course a contractual agreement makes little sense. A couple in this situation, however, should be advised that if their relationship lasts or produces a child, they could acquire more commitments than they'd intended.

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## Lesson 2: The Extended Family



If you have a child from a previous marriage and you marry again, what legal obligations does your new spouse have to your children? If you're an adult and your aging parents are no longer able to support themselves, do you have a legal obligation to provide for them? If your adult child has children and his or her marriage breaks up, what rights, if any, do you have to visit or be involved with your grandchildren?

In this lesson you'll be looking at issues like these—issues that pertain to the area of family law that goes beyond marriage, cohabitation, and separation. Of course, family law is a broad area, and you'll be able to touch upon only a few issues like these that involve the extended family. The hope is that the lesson will help make you aware of the sorts of problems that commonly arise in the area of family law and the way the courts and lawmakers deal with them.

**extended family:**  
*the family that goes beyond husband, wife, and child to include relatives*

## The Marriage of Previously Married People

When a married couple gets a divorce, both partners are free to remarry. As you've seen, though, this doesn't normally put an end to their obligations. If children are involved, the non-custodial parent will likely have to make child-support payments while the custodial parent will have to continue to care for the children and allow his or her ex-spouse to spend time with them. And there may be spousal-support obligations involved as well.

But what happens if either spouse remarries? If the custodial parent wants to marry again, he or she will be bringing the children into the new relationship. They'll now have a step-parent. What obligations will this person have toward the children? If it's the non-custodial parent who wishes to remarry, he or she will be taking on an obligation to support a new spouse and, possibly, children. Will this parent have to continue making child-support payments to his or her ex-spouse as well, effectively having to help support two separate families?



A custodial parent is the person legally responsible for a child after divorce, though the non-custodial parent, as you've seen, frequently retains access rights. If the custodial parent remarries, his or her new spouse, the child's step-parent, can formally adopt the child, thereby assuming the legal obligations involved in becoming a parent.

For this to happen, however, the child's other biological parent must consent unless there are valid reasons for the court to dispense with this consent. If the child is over the age of 12, his or her consent is also normally required. Once the adoption goes through, the child will be given a new birth certificate showing the step-parent to be the child's legal parent. That person then has all the normal obligations that any legal parent owes his or her children.

But what about the non-custodial parent? If a non-custodial parent (a father, for example) is making support payments to help maintain a previous marriage, remarrying, along with all the commitment and expense involved, will make no difference to these obligations. In fact, the courts regard his obligations to his first family as having priority over everything else. Of course, if the ex-spouse of a non-custodial parent remarries and his or her new spouse formally adopts the children, there's always the chance that the courts will review the situation and alter the child-support awards. Normally, however, a non-custodial parent is expected to go on making payments even if he or she creates a new family and incurs new obligations.

1. If a non-custodial father remarries and finds himself with a brand-new family to support, his new obligations won't interfere with his responsibilities to the children of his first marriage. But what if the woman he marries his second time around is very wealthy and his old family is struggling financially? Do you think the support payments he's expected to pay should be increased? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

## Grandparents' Rights




Imagine the following scenario.


You're getting on in years and your children have grown up and married. Your son now has three children of his own—children that mean almost everything in the world to you. You see them regularly, you baby-sit them frequently, and you delight in watching them grow up.

Then one day you discover that your son and his wife are getting a divorce. There's a battle over custody, and your son loses. His ex-wife is forced to allow your son regular visits, but because of the bitterness the divorce has created, she'll no longer let you even see your grandchildren. What's more, you begin to suspect that the children aren't being properly looked after; you want to help, but you've been completely cut out of their lives.

Unfortunately, situations like this aren't as uncommon as you might think. You might find it difficult at your age to put yourself into the position of grandparents in this sort of situation, but the effects can be devastating on them.



Wait a minute here. I mean, whose kids are these anyway? Not the grandparents'. If a parent gets custody, that means the court figures that's what's best for the child, right? So shouldn't the custodial parent be able to say who can and who can't visit the kids? Surely she—or he—is the best judge of how good an influence a grandparent is.



That's a very good point. Like any issue, this one has two sides. But often grandparents are the forgotten victims of custody battles—and so are the children if they're denied contact with good grandparents simply because the custodial parent is angry at that whole side of the family.

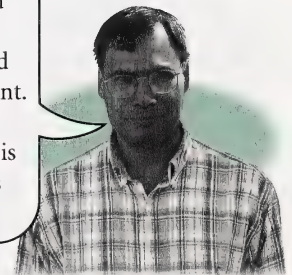
The rights of grandparents to have access to their grandchildren is a rather murky area of the law, but one thing that's clear is that the *Divorce Act, 1985* states that a judge can make an access order—and even a custody order—upon application by “either or both spouses or by any other person”; and “any other person” can clearly include grandparents, along with aunts, uncles, and anyone else having an interest in the child.

Despite this provision in the *Divorce Act*, though, grandparents have traditionally had difficulty getting access rights to their grandchildren. In fact, groups such as the Canadian Grandparents' Rights Association have been formed to promote grandparents' interests in gaining this right. So far, four provinces—Quebec, Alberta, New Brunswick, and British Columbia—have given some rights to grandparents to visit their grandchildren. In Alberta, this right was conferred in 1997 when a bill amending the *Provincial Court Act* was passed; that amendment gave grandparents the right to try to gain legal access to their grandchildren by going to the courts.



So if your adult child gets a divorce, you automatically have the right to visit the grandkids?

It's not quite that simple. What you have is the right to argue in court that you should be allowed to see the grandchildren—if you've been denied that access by the child's custodial parent. A judge will decide if it's in the best interests of the children to give you this right. Remember, the first concern is always what's best for the children.



2. Some people have argued against the amendment to Alberta law giving grandparents the right to apply to the courts to have access to their grandchildren, saying that it reduces parents' ability to control who visits their children. It's even been suggested that grandparents might be able to stop a parent from moving to a different community if it interfered with their access rights. Perhaps it's arguments like these that has kept other provinces from following Alberta in allowing rights of this sort.

What are your views? Is this amendment a good idea or not? If not, how might it be improved? Give reasons for your ideas, and present your ideas in a short position paper of no more than a page. Alternatively, debate the question in class or with a study partner.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



## Going Further

Remember that the discussion here concerns the rights of grandparents to visit with their grandchildren if the parents of those children are married people who have divorced. When married couples with children in Alberta separate but don't divorce, and when cohabitating couples with children separate, things are different. Alberta's *Family Law Act* grants grandparents the right to make an application to the courts for a "contact" order that would allow them time with their grandchild(ren).

To learn more about this right of Alberta's grandparents, go to the following website:

[http://www.qp.gov.ab.ca/catalogue/catalog\\_results.cfm](http://www.qp.gov.ab.ca/catalogue/catalog_results.cfm)

First, scroll down to "Catalogue Search" at the bottom of the page and run a search for the *Family Law Act*. Next, click on "Family Law Act." Once there, click on "View This Document." Check under "Part 2; Division 3: Contact Orders."



## Support for Aging Parents

Here's another scenario to think about.

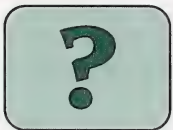
Marlene is 40 years old and a single mother of two teenagers. She works hard to support her family, make the rent payments, and pay her taxes. Her widowed mother, meanwhile, is becoming elderly and is living in poverty. Marlene feels she's doing all she can to support her own family, so she doesn't offer her mother any financial help. Should there be a law requiring Marlene to help support her mother?

Most people would probably feel that Marlene has a moral obligation to help her mother out if she possibly can. After all, while raising Marlene, her mother probably made the sacrifices most parents make. But should the law force Marlene to make payments against her will? And what if she and her mother didn't get along? What if her mother had been cruel to her? What if she'd kicked Marlene out of the family home permanently while she was a teenager?



3. Before going on, present your own initial views on this question: Should the law force adult children to financially support their needy parents? If you have a study partner, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.






Not long ago, the Ontario Court of Appeal upheld a decision by a lower court that required the adult children of a 60-year-old widow to provide financial support for their mother.


The judge in this case based his decision on Ontario's *Family Law Act* (not to be confused with Alberta's *Family Law Act*), which specifically requires an adult child to help a financially needy parent.

It didn't matter to the judge that Ms. Goodwin had been a less-than-ideal mother. It also didn't bother him that at least one of her children, a daughter named Madeline, was herself a divorced mother supporting five children with no help from her husband and only part-time work. Ms. Goodwin was needy, and Ontario's *Family Law Act* required her adult children to support her.

The situation is different in Alberta. According to Alberta's own *Family Law Act*, spouses and adult interdependent partners are required to support each other—and parents are required to support young children—but there's no requirement for adult children to support their parents. However, as the percentage of elderly people in Alberta's population increases, there's a chance that this situation may change.



But don't we have programs in place to make sure elderly people get financial help from the government—like Old Age Security and the Guaranteed Income Supplement? I know my grandfather gets money from both of those programs.



That's right. In Canada we do tend to believe that the government should play a role in seeing that the elderly and infirm are looked after; that's why there's been so little emphasis on children looking after their parents. It's different in the United States, though; a number of states have—and enforce—laws that require children to provide for parents who can't look after themselves.



4. Ultimately, where do you think the legal responsibility for looking after the elderly should lie—with the government (in which case all taxpayers pay) or with family? Defend your views.



Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

## Enduring Power of Attorney

If you're in high school, you probably haven't given any thought at all to writing a will, but you very likely have a general idea of what wills are and how they work. If you've taken Legal Studies 1010, you should have a very good idea of the importance of writing a carefully worded, legally valid will to ensure that your estate is dealt with according to your wishes.

More and more lawyers these days are advising their clients that there's something else that's just as important as writing a will but which relatively few people even know about. This is creating what's called an *enduring power of attorney*.

**power of attorney:** a document giving another person authority to act on your behalf

**agent:** a person given the legal power to act on another's behalf

A power of attorney is a legal document that gives another person (called your **agent**) the power to make legal decisions on your behalf. If you're suddenly transferred overseas by your employer, for instance, you might give someone a power of attorney to look after the sale of your home in your absence. This is a *special power of attorney*, because it's limited to whatever is involved in selling the house. A *general power of attorney*, in contrast, gives your agent very wide powers to make legal decisions for you for a period of time. An example would be people with complex and wide-ranging financial affairs hiring experts to look after everything for them.

If you give an agent a power of attorney and that agent acts within the limits set out in the document, you're legally bound by those actions. For instance, if an agent who's been given the power to do what's necessary to maintain your property while you're out of the country hires a contractor to make repairs, you'll have to pay the contractor. On the other hand, if the agent goes beyond the powers stipulated in the document (for instance, if she contracts to have an addition built onto your home), you won't be bound by this action.

5. Ms. Renkema gives an agent a power of attorney to look after the sale of her home. She tells him informally that she expects to get at least \$150 000 for the house, but the agent sells it for \$120 000. Will Ms. Renkema be bound by her agent's contract of sale? Why or why not?



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

So far, so good. People can create powers of attorney whenever necessary throughout their lives. Sometimes they last a long time, and sometimes (especially in the case of special ones) they end very quickly. An **enduring power of attorney**, however, is a very different thing.

**enduring power of attorney:** a legal document giving an agent the right to look after your financial affairs should you become unable to do so

An enduring power of attorney is a document appointing an agent to look after your financial affairs indefinitely—or until you revoke it. Some enduring powers of attorney are set up to come into effect immediately, but usually they're designed to start if and when you became mentally incompetent to look after your own affairs. For instance, if you're in a car accident and end up in a coma, or if, when you're older, you get a condition like Alzheimer's disease that robs you of your ability to understand your affairs and make informed decisions, an enduring power of attorney gives another person you trust the right to make decisions for you.



But I can see a snag here. If you're in a coma or something, how can you create an enduring power of attorney? It's too late to do it then.

Exactly. That's why lawyers advise people to create enduring powers of attorney while they can. They're designed to come into effect only if you should lose your ability to look after your own affairs.



- Suggest a reason why lawyers often tell their clients that an enduring power of attorney is just as important as a will.
- Can you see any dangers in creating an enduring power of attorney? Set up a chart like the one that follows and try to list **two** possible dangers. Then, beside each danger, suggest a solution.



Enduring Power of Attorney	
Dangers	Solutions

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

As you no doubt realized while answering the preceding questions, creating an enduring power of attorney isn't something to be taken lightly, but there are legal precautions in place to see that the powers these documents create are seldom abused. Turning over complete control of one's financial affairs to another person always has inherent risks; but if set up properly, an enduring power of attorney may someday save a person's family years of financial hardship.

### Going Further

To learn more about enduring powers of attorney, call the Dial-A-Law service and request recording 213: *Power of Attorney*. Once again, the numbers are 234-9022 in the Calgary area and toll-free anywhere in Alberta at 1-800-332-1091.

And that's the end of Lesson 2. In this lesson you've looked briefly at just a few legal issues that affect the extended family. In Section 4 you'll be digging into more issues in the area of family law—and issues of a more controversial nature. First, however, there's one very important matter related to family law that should be covered in Section 3—the problem of abuse within families. This will be the topic of Lesson 3.

### Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer question 2.

## Suggested Answers

1. Answers will vary. Some people would argue that since the father is now in a much stronger financial position, it's not fair that his original family has to continue to suffer deprivation. Others would say that it wouldn't be fair to his new wife to make her pay for a family she had nothing to do with and toward whom she should have no obligations.

In actual fact, a judge's decision as to a non-custodial parent's payments is based on that person's financial situation; and in some cases, especially where his or her financial resources are meagre, the courts can take into account the new spouse's situation. In other words, it is possible for the second spouse to end up contributing to the support payments made to the first spouse.

2. Answers will vary. Were you able to support your views? It's highly unlikely that granting grandparents access would reduce parents' mobility rights; grandparents would have to prove that it was in the best interests of the child to remain close to them, which would be difficult. It's true that granting grandparents access to their grandchildren somewhat reduces parents' rights to control their children; but it's important to remember that as long as the principle that the child's best interest comes first is honoured, there's probably little danger that giving grandparents access privileges would do much harm. And it could do a great deal of good to maintain the stability provided by caring grandparents at a time when a child's world seems to be turned upside down.

3. Answers will vary. It probably says a good deal about our society that this question is even raised; in most societies in the past, it's been taken for granted that children look after their parents when those parents get old, and this is still true in many parts of the world today. It can certainly be argued, though, that since we do live in a society where this doesn't always happen, there should be laws seeing that it does. Others point out, however, that such laws will just drive deeper wedges into families that are already divided and that, in our wealthy society, the government should use tax dollars to see that the aged are all well looked after.
4. Answers will vary. Your response to this question should be consistent with your answer to question 3. Check to make sure that it is. If it isn't, you should do some re-thinking of your position on this issue.
5. It's likely that Ms. Renkema will be bound by the sale. If she didn't want to sell her home for less than \$150 000, she should have made sure this was stipulated in the written document creating the power of attorney. The agent seems to have been acting within the authority she'd given him.
6. The possibility always exists that you'll suddenly become unable to look after your affairs yet remain alive for many years. With modern advances in health care, the likelihood of this is increasing. This could mean that your family couldn't get access to any of your assets until you died and your will came into play. As a result, they (and you) could suffer want for years while your money just sat there. For this reason, people with dependants should probably think very seriously about creating an enduring power of attorney as well as a will.
7. Charts will vary. Compare your chart with the one that follows.

Enduring Power of Attorney	
Dangers	Solutions
<ul style="list-style-type: none"> <li>Someone wanting access to an elderly person's money could trick or intimidate that person into giving him or her an enduring power of attorney.</li> <li>Someone who had been given an enduring power of attorney could maintain that the person who had created it could no longer look after his or her affairs. This would give the agent total control over the person's assets.</li> </ul>	<ul style="list-style-type: none"> <li>A lawyer must sign a certificate for every enduring power of attorney verifying that the person creating it understands what he or she is doing.</li> <li>Unless the creator of the enduring power of attorney wants it to come into effect immediately, a doctor must determine when you're no longer competent to look after your affairs.</li> </ul>

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## Lesson 3: Abuse Within Families

### What Is Abuse?



Do you sometimes watch the news on television? If you do, you're likely used to hearing story after story about abuse—physical abuse, sexual abuse, emotional abuse, spousal abuse, child abuse, elder abuse, abuse of family members with disabilities, and even abuse of unborn children. Our society has really only recently opened its eyes to the scope of the abuse that can go on within families, and sometimes it seems that suddenly almost everyone has a story to tell.

Of course, the news media can distort our perceptions of reality. Abuse doesn't go on in most families, and, when it does, it's not usually the horrific stuff that boosts

viewer ratings on TV newscasts. However, abuse does exist within some families, and it's not something our society should tolerate at any level.

Abuse within families can, as you noted in the opening paragraph of this lesson, take many forms. Some people divide it up into five general classifications:

- *Physical abuse* is the intentional application of physical force—or a threat to use it—to a family member. Examples are pushing, punching, slapping, shoving, kicking, spitting, pinching, pulling hair, choking, throwing things, striking with an object, using or threatening to use a weapon, locking someone out of the house, abandoning someone in an isolated or unsafe place, and threatening to physically harm someone.
- *Sexual abuse* includes unwanted sexual advances, touching, intercourse, or any other activity where one family member uses his or her power over another to achieve a sexual objective.
- *Emotional or psychological abuse* includes things like constant criticism, intimidation, isolation from friends, controlling with fear, or any behaviour that undermines the mental or emotional well-being of another.
- *Economic abuse* involves controlling, exploiting, or limiting another person's access to financial resources; misusing another's funds; and cheating or stealing from a family member.



- *Neglect* is an act of omission that causes significant emotional or physical harm to a family member for whom one is responsible.

However, classifications of this sort are never perfect. All abuse, for instance, can ultimately be called emotional abuse in that it undermines the emotional well-being of its victims. Nevertheless, these broad categories can be useful in coming to understand just how great the potential is for abuse to occur within a family.

## Going Further

There's a great deal of helpful information available on abuse within families. As usual, a good place to start is the Internet. Following is the address of a good site to visit:

<http://www.law-faqs.org/topics.htm>

Once there, you'll see that the first and fourteenth bullets have a list of topics on abuse and family violence. At this point, select any of the more general topics—like “Physical Abuse”—and see what you can learn. As you work through this lesson, you'll be able to learn more about more specific topics—like “Restraining Orders” and “Peace Bonds”—as they're discussed by going back to this site and choosing other topics.

Your librarian should also be able to find you material on family violence and abuse.

## Remedies for Victims of Abuse

Fortunately, there are many legal remedies for victims of abuse. But not all abuse is strictly against the law. A wife who constantly criticizes her husband or uses money to control him isn't breaking any laws; still, serious emotional abuse is, as you've seen, an indication of marriage breakdown and thus a ground for divorce.

Other types of abuse are, however, very much against the law—physical and sexual abuse being examples. In what follows, you'll be looking at some of the remedies available for victims of family violence.

**family violence:**  
any behaviour  
by one family  
member against  
another that may  
endanger the  
person's survival,  
security, or  
well-being

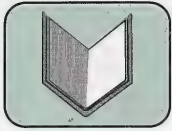
What can a person do if a family member is physically abusive? The discussion that follows will look at some of the different remedies available to Albertans. It will begin by looking more broadly at remedies available across the country; then the focus will narrow to Alberta's *Protection Against Family Violence Act*.



## Laying Criminal Charges



According to the *Criminal Code*, a federal statute, both assault and sexual assault are criminal offences. Anyone who has been physically or sexually assaulted may have a criminal charge laid against the person responsible—including his or her spouse. This will involve either contacting the police and having them lay a charge or going to the police station and “laying an information” against the person involved.



To learn more about the offence of assault, open your textbook and read the material under the heading “Assault” on pages 133 and 136, skipping the case study on page 136. Note especially the differences between the three levels of assault.

1. Tell whether an assault has occurred according to the *Criminal Code* in each of the cases that follow. If it has, tell what type of assault was involved.
  - a. Jerome deliberately shoves Stephan.
  - b. Alice, intending to hit Bernice on the shoulder with a stick, accidentally blinds her.
  - c. Ricardo waves his fist under Lorne’s nose and shouts, “I’m going to beat you to a pulp!”
  - d. Liz pushes Renée down, pulls a knife, and dares Renée to get back up.
  - e. Krish walks up to Joseph and calmly tells him that if he ever talks to Krish’s girlfriend again he’ll punch his lights out.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

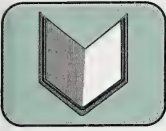
If there has to be an actual physical gesture for something to qualify as an assault, what can you do if someone threatens you without that gesture? I mean, you can get terrifying phone calls full of threats but all you hear is the voice.



In that situation, a charge of *criminal harassment* can be laid. Issuing threats is a different offence from assault, but it’s very much a crime according to the *Criminal Code*.







To learn about the offence of sexual assault, turn to page 136 of your textbook and read the material under the heading “Sexual Assault” as far as the bottom of page 139. Again, you can skip the case study on page 138.

2. Just as there are three levels of assault, so too there are three levels of sexual assault. How many of these levels permit one spouse to bring a charge against the other?
3. Can a husband accused of sexual assault use as a defence the fact that he believed that his wife consented? Explain your answer.

Turn to the Suggested Answers at the end of this lesson  
and compare your answers with the ones given there.

If one spouse does bring a criminal charge against the other, the complainant will have to be prepared to testify in court if the spouse charged pleads not guilty.

## Commencing a Civil Action

If you’ve taken other Legal Studies courses, you should be familiar with the distinction between criminal and civil law. **Criminal law** involves situations where the governmental authorities—such as the police and Crown prosecutors—prosecute suspected wrongdoers. By contrast, **civil law** involves cases where private individuals (or organizations) can sue others in court for compensation for some wrong done to them.

For example, if you accidentally backed your car through your neighbour’s new fence, it’s your neighbour, not the police, who would sue you for money to repair the fence. Many actions, of course, can result in both criminal and civil court cases. A person injuring someone by driving recklessly is likely to be taken to court by the victim for financial compensation and again by the police on a criminal charge.

Battered spouses—or other people suffering physical abuse at the hands of family members—always have the option of bringing a civil action against their abusers, just as they would against a stranger who assaulted them. Normally in this sort of case (if it’s successful) a court awards **damages**—a term for money awarded to the victim to compensate him or her. Normally victims of abuse aren’t after money, of course; what they want is to put an end to the violence. For this reason, it’s very unusual for anyone to commence a civil action of this sort against a spouse or other family member. Nevertheless, you should be aware that this option does exist.

4. Tell whether each of the following situations might result in a criminal or a civil trial.
  - a. The chef at the exclusive Chez Ralph restaurant forgot that Ms. Spenser had told him she was very allergic to garlic. He put garlic into her entrée, with the result that Ms. Spenser spent Christmas in hospital and missed two weeks of work.
  - b. Mr. Jorgensen rented a quarter section of land to grow barley on, agreeing to pay the owner a portion of his profit. When Mr. Jorgensen sold his crop, however, he refused to pay the owner a cent.



**criminal law:** the branch of law that sets out certain acts as crimes and punishes those acts

**civil law:** the branch of law that governs the relations between individuals

**damages:** money awarded by a court to a plaintiff in a civil action to compensate for a wrong suffered

- c. Celine ran three stop signs in her hurry to get to work on time the first day of her new job.
- d. Miss Kinderchuk failed to cover the old well on her property. As a result, a child fell in and drowned.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Getting a Restraining Order

**restraining order:** a court order requiring a violently abusive person (often a spouse or partner) to stop molesting, annoying, or harassing another party

A more practical alternative for a victim of violence is to apply to the courts for what's called a **restraining order**. A restraining order is a court order requiring an abusive person—often a spouse or partner—to stop molesting, annoying, or harassing another person—for example, the other spouse or partner and/or any children—for a period of time decided by the judge, most often for three months. A restraining order can be obtained in just a few days if there's an emergency and if the court is satisfied that the party in question has been physically abusive and that the person applying for the order (and/or the family's children) is in danger. If an abusive person breaches (breaks) a restraining order, the abused party can have this person arrested by the police.



So what happens if you get a restraining order against, say, your violent uncle, and he shows up one day anyway?

So once you've done that, you're safe, right?

The restraining order gives you the right to call the police and have him arrested. Once you get the order, by the way, you should register it with the police so it's on their computer system. That way they'll be able to take prompter action.



Not necessarily. If you're dealing with a violent person, you should still take whatever steps you can to protect yourself. A restraining order in your pocket won't do you much good if you're physically attacked. We'll soon be discussing a few things you can do in emergency situations.

## Using Anti-Stalking Laws

One problem with restraining orders is that they're normally awarded only if the person they're made out against is actually engaging in abusive behaviour. But what about the situation where one family member hasn't done anything actually abusive but whose behaviour is frightening or disturbing another member? An example might be a wife who's separated from her husband but who follows him everywhere or who parks her car outside his home and watches everything that goes on.

Section 264 of the *Criminal Code*, entitled Criminal Harassment, makes such behaviour unlawful. Known informally as the "anti-stalking" law, this section of the *Criminal Code* allows anyone victimized in ways like this to have criminal charges brought against the person responsible. This can be a spouse, a common-law partner, or anyone else.

## Obtaining a Peace Bond

The *Criminal Code* offers abused family members another option—applying to the criminal courts for a peace bond. A peace bond is a court order requiring a person to keep the peace and to obey any conditions the judge sees fit to impose. To get a peace bond, you must "lay an information" at the police station or contact the Criminal Division of the Provincial Court. Then you'll have to appear before a judge and testify that you're fearful for your safety or the safety of your child (or another family member) or your property. If the judge thinks your application is reasonable, a peace bond will be granted for up to one year under Section 810 of the *Criminal Code*.



**peace bond:**  
a court order  
requiring a person  
to keep the peace  
and obey any  
conditions the  
judge sees fit to  
impose

If the party against whom the order is made out—for instance, a violent spouse or partner—breaches the peace bond, you can have him or her charged with a criminal offence. But like a restraining order, it takes a bit of time to get a peace bond, and the protection it offers is limited. It won't help you much that an abusive family member is arrested for breaching the bond if, in the meantime, he or she has assaulted you.

## Using the *Matrimonial Property Act*

Another way a spouse or partner who's been the victim of family violence can protect himself or herself is to make use of provisions in the *Matrimonial Property Act* by which a court can issue an order restraining the abusive spouse/partner from entering—or even coming close to—the matrimonial home. This is called an *exclusive matrimonial home possession order*. The matrimonial home is the principal home the couple have lived in, whether they rent or own it and no matter whose name it's registered in. This means an abused wife, for instance, can get a court order preventing her husband from approaching their home even if he's paid for it and it's registered in his name. Of course, an order of this sort won't protect the abused spouse when away from the home, but it has the advantage that it usually lasts longer than an ordinary restraining order.



Until Alberta's *Adult Interdependent Relationships Act* came into effect, cohabiting couples couldn't use this remedy; it was restricted to spouses. Now, however, adult interdependent partners are also entitled by law to this protection.

5. Remedies for family violence like peace bonds, restraining orders, and exclusive matrimonial home possession orders all play an important role in protecting family members from physically abusive home situations. However, over time they've all had one serious drawback.

Can you see what it is? Imagine yourself in a situation where a family member is beating you—or perhaps your children—or threatening in a convincing manner to kill you or burn your house down. What shortcoming do you see in the remedies you've already looked at?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

## The *Protection Against Family Violence Act*



The suggested answer to question 5 points out that all of the remedies for family violence that you've looked at so far have a common failing; they all take time to implement when a victim of abuse may need help right away.

It was partly for this reason that the Alberta government recently created a new statute: the *Protection Against Family Violence Act*.

Another reason for the new legislation was to extend the protection of the law to cover more situations and more family members than some of the other remedies had previously done.

The *Protection Against Family Violence Act* is designed to give immediate protection to all family members, including people who

- are or have been married to each other
- are or have been adult interdependent partners
- live together, or have lived together, in an intimate relationship
- have had children together
- are children of anyone in the custody of any of the preceding categories
- live together and are related to at least one person in the household by blood, adoption, marriage, or an adult interdependent relationship

As you can see, the *Act* takes into account just about anyone who could be thought of as a family member, including relatives like aunts, uncles, mothers-in-law, grandparents, and adult children. But just how can a family member make use of this legislation to protect himself or herself or someone else in the family? Three new types of court orders have been created by this statute:

- an emergency protection order
- a Queen's Bench protection order
- a warrant permitting entry

## Emergency Protection Orders

An emergency protection order issued under the *Protection Against Family Violence Act* is a court order that has a big advantage over the other types of court orders you've been looking at. As its name suggests, you can get one immediately in an emergency situation at any time, day or night. If there's a violent or threatening situation involving a family member, you can simply dial 911 and ask for police help. When the police arrive, you can explain the situation, giving all the necessary information, and ask for an emergency protection order; if the police believe that there's a good reason for such an order, they'll immediately contact a provincial court judge or a **justice of the peace** and it will be up to this person to issue you an order.



**justice of the peace:** a judicial officer who does such things as issue arrest warrants, administer oaths, and deal with the release from custody of people accused of crimes

The order itself can provide you with protection in different ways, depending on the situation. For instance, it can prevent the abusive family member (the *respondent*) from being in specific places—like your home, school, or place of work—at specific times. It can even give you (the *claimant*) the exclusive right to occupy your home for a length of time—even if the respondent owns the home. As well, it can authorize a police officer to remove the respondent, seize any weapons, or accompany you home. It can also authorize the police to arrest the respondent should he or she break the order. Another important thing about an emergency protection order is that a judge can include in it any other item he or she feels is warranted by the situation. Of course, this puts the onus on you to make your needs known.

6. One night Gabriel comes home at 2:00 a.m. He is very drunk, and begins beating Kaitlyn, his cohabiting girlfriend. She manages to lock herself in the bedroom, where, fortunately, there's a telephone.
- What steps would you advise Kaitlyn to immediately take?
  - Once the police have arrived, suggest some of the things you think Kaitlyn should ask to have a judge (or justice of the peace) include in an emergency protection order.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.


### Queen's Bench Protection Orders

An emergency protection order takes effect as soon as it's made and the respondent is notified. But within seven days, according to the *Protection Against Family Violence Act*, a judge of the Court of Queen's Bench (one of the province's higher courts) must review the order.


7. Suggest a reason why it's important to review emergency protection orders in this way.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

If the judge in the Court of Queen's Bench is convinced that it's warranted by the situation, he or she will issue a Queen's Bench protection order. An order of this sort can do all the things an emergency protection order can do and a good deal more. And unlike an emergency protection order, a Queen's Bench protection order can be in force for up to a year.



What if there's no real emergency but you think a family member could become violent? Can you skip the emergency protection order and go right to the Court of Queen's Bench?



Certainly, but you'll have to appear before a judge, and notice must be given to the respondent so that he or she can also appear and tell the other side of the story—if there is one. The main advantage over a restraining order or peace bond in this situation is that the judge can include more extensive provisions in a Queen's Bench protection order.

## Warrants Permitting Entry

The third sort of order that can be issued under Alberta's *Protection Against Family Violence Act* is a warrant allowing the police to enter a home or another premises. For example, if you call the police and the abusive family member won't allow them to enter your home, the police can apply to a judge for a warrant to enter all the same. Once inside, you can request an emergency protection order.

### Going Further

Because family violence is such a serious issue, and because victims can often feel trapped and helpless, there's a good deal of information available to the public about the help that's available—as you've already discovered if you tried the Going Further activity presented earlier in this lesson. There will be more on this topic later in this lesson, but meanwhile here's a website that will give you answers to many of the questions you may have about the *Protection Against Family Violence Act*:

<http://www.law-faqs.org/ab/pafva.htm>

8. In just a sentence or two each, explain the role each of the following orders, all available under the *Protection Against Family Violence Act*, can play in providing protection for victims of family violence.

- a. emergency protection orders
- b. Queen's Bench protection orders
- c. warrants permitting entry

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Child Abuse



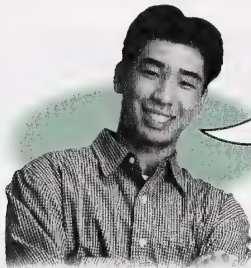
Though much of the family abuse we hear about involves spouses and partners, if there's a family-related problem in our society even more dreadful than abuse of this sort, it's certainly child abuse.

Though abused spouses can feel frightened and trapped, the fact remains that they are adults who can take steps to end their abusive relationships. Young children, on the other hand, who are victimized by the very people who are there to look after them, often have no one to turn to and no way of getting the help they need. Only abuse of the elderly and incapacitated shares this same characteristic of child abuse.

Of course, under Alberta's relatively new *Protection Against Family Violence Act*, family members aware of violence or potential violence aimed at children in the family can apply for protection orders. But violence is only one sort of family abuse, and children need a broader form of protection. Because children who are abused or neglected in their homes are deemed to need governmental protection, Alberta's *Child, Youth and Family Enhancement Act* contains a section devoted exclusively to this problem. This legislation gives governmental authorities—police and provincial social workers—the power to apprehend children who appear to be in danger in their homes. Because it's often critical to get an abused child out of the home immediately, no warrant is needed for an apprehension.

Depending on the severity of the situation, one of two things may be done to protect the child from more harm:

- The child may be returned to his or her home on the condition that social workers will supervise the situation for a period of time. As well, support needed to allow the family to continue caring for the child will, if possible, be provided through a *Family Enhancement Agreement*, signed by the parents. This is always the preferred course to take if it doesn't further endanger the child because it's considered to be best for children if they can continue living in the family home under the care of their parents.
- The child may be placed under guardianship, which means that a government agency takes responsibility for the child, probably temporarily placing him or her in a foster home. In the most serious cases, this may become a permanent situation. The *Child, Youth and Family Enhancement Act* puts an emphasis on placing children, whenever possible, within their own communities and extended families—for instance, with aunts, uncles, or grandparents.



Permanent foster care sounds pretty severe. I'm glad the *Act* tries to keep kids in their community and family.

So am I. Remember that the well-being of the child is always the most important consideration. In actual fact, it's rare for a child to be placed straight into a permanent guardianship. It's a last resort.



As you read earlier, the *Child, Youth and Family Enhancement Act* requires anyone who reasonably suspects that a child's life or security is in danger to report it. This means neglect, improper care and feeding, abandonment, and cruel treatment as well as physical or sexual abuse. The Ministry of Children's Services operates a 24-hour confidential telephone service called the Child Abuse Hotline to make reporting easy and quick. You simply dial, toll-free, 1-800-387-5437.



Following is a list of situations in which the authorities may step in under the *Child, Youth and Family Enhancement Act* and offer intervention:

- The child has been abandoned or lost.
- The parent or guardian of the child is dead, and the child has no other guardian.
- The parent or guardian of the child is unable or unwilling to provide the child with the necessities of life (food, shelter, clothing) as well as proper medical, surgical, and dental care.
- The child has been, or there is substantial reason to think that the child will be, physically injured or sexually abused by his or her parent or guardian.
- The parent or guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse.
- The child has been emotionally injured by his or her parent or guardian.
- The parent or guardian of the child is unable or unwilling to protect the child from emotional injury.
- The parent or guardian of the child has subjected the child to, or is unable or unwilling to protect the child from, cruel or unusual treatment or punishment.



### Going Further

- If you'd like to learn more about issues relating to child abuse—or to other legal issues relating directly to children or family violence—a good place to start is the following web page from Alberta's Ministry of Children's Services website:

<http://www.child.gov.ab.ca/whatwedo/familyviolence/page.cfm?pg=index>

- Another alternative is to return to the following website, given earlier in this section, and select other topics to investigate:

<http://www.law-faqs.org/topics.htm>

- Here are some Dial-A-Law recordings you might listen to as well:
  - 122: *Battered Spouses*
  - 123: *Battered Women*
  - 124: *Children Needing Protection*
  - 901: *Spousal/Partner Abuse*
  - 902: *Suspected Family Violence*
  - 903: *Child Abuse*

Again, the number to call in the Calgary area is 234-9022. Elsewhere in Alberta, dial, toll-free, 1-800-332-1091.





While we're on the topic of child abuse, I've heard of something called the *Child and Youth Advocate*. What's that all about?

So what exactly does the Child and Youth Advocate do?

Advocates are people who speak on behalf of other people—presenting their cases when the people themselves can't do it as well. Naturally, children and youths aren't usually able to speak up for themselves adequately; normally, it's their parents or guardians who do it for them. But sometimes this isn't possible, and that's where the Child and Youth Advocate comes into play.



The Child and Youth Advocate is a fundamental part of Alberta's child welfare system. It's an office designed to take the part of children receiving services under the *Child, Youth and Family Enhancement Act* to ensure that their side of the story is presented and that they receive the best treatment possible. To learn more about the Child and Youth Advocate, refer to the Going Further activity that follows.

## Going Further

If you'd like to learn more about Alberta's Child and Youth Advocate, go to the following website and see what you can learn. Remember that legally you're still a child (or a minor) until you turn 18, so the Child and Youth Advocate is an office designed to defend the rights and best interests of both children and younger teenagers.

<http://www3.gov.ab.ca/cs/ocya/index.html>



## Abuse: Some Practical Advice

Abuse within families isn't limited to spouses, partners, and children, of course. Elderly relatives often find themselves as much at the mercy of those they depend on as children do. Too often stories emerge of elderly parents, perhaps mentally or physically incapacitated in some way, who are neglected and mistreated while their adult children live in their home and bully them into handing over control of their life savings. People with disabilities, too, can be especially susceptible to abuse within their families.

## Going Further

This website will give you more information on the problem of elder abuse:

<http://www.oak-net.org>

Until not long ago, no law like the *Child, Youth and Family Enhancement Act* existed in Alberta to protect adults from abusive family members, but with the recent *Protection Against Family Violence Act*, which you're now quite familiar with, Alberta has created an effective means for all family members to protect themselves.

Your look at abusive family situations in this lesson has been largely academic. Unfortunately, however, family violence is all too real an issue in people's lives, so it's important for people to know just what practical steps they can take if they, or someone in their family, is a victim of violence or at serious risk. Here, in summary, are some of the steps that individuals can take:

- In an emergency situation, call 911, and when the police arrive ask for an emergency protection order under the *Protection Against Family Violence Act*.
- If a child is involved, call the Child Abuse Hotline toll-free at 1-800-387-5437.
- Check the Emergency Numbers pages at the beginning of your phone directory for numbers of crisis lines, counselling lines, and shelters for victims of violence. You'll be able to get immediate help and advice on what legal steps to take. Alternatively, call the Community Referral Line. In the Edmonton area the number is 780-428-4636, while in the Calgary area it's 403-268-4636.
- Contact the Prevention of Family Violence and Bullying division of Children's Services. Call, toll-free, 310-0000 and ask for 422-5916. The website address is



<http://www.child.gov.ab.ca/whatwedo/familyviolence/page.cfm?pg=index>

- If there's no immediate danger, apply to the Court of Queen's Bench for a Queen's Bench protection order.
- Apply to the courts for a peace bond or a restraining order.
- Contact the police and find out if the abuse may be such as to constitute a criminal offence. If so, criminal charges can be laid.
- Contact a lawyer and get advice on the steps you should take.

Abuse and family violence are very painful topics, but they are matters that are best out in the open where something can be done to stop or limit them. Of course, the issue goes far beyond the legal aspects touched on here. The question of why people abuse those closest to them is a complex one; it's well beyond the scope of this course. But if you ever do experience an abusive situation within your family, it's important to have some idea of what your legal options are.

## Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer questions 3 and 4.

## Suggested Answers

1.
  - a. This is a simple assault. Note that an assault doesn't have to cause injury or be violent. The simple act of deliberately shoving another person can be an assault.
  - b. This is aggravated assault. Bernice was maimed during this assault even though Alice didn't intend this result. (Your text tells you that the *mens rea* required for aggravated assault is only to commit bodily harm. *Mens rea* is a Latin expression used in criminal law to mean intent or awareness of the harm your action might cause.)
  - c. This is simple assault. Even though no physical contact was made, Ricardo made a threatening gesture of physical violence.
  - d. This is assault causing bodily harm because Liz threatened to use a weapon during the assault. Actual bodily harm need not have resulted.
  - e. There is no assault here because there was no physical gesture accompanying Krish's words. (Krish has, however, committed another criminal offence—uttering threats.)
2. A person can bring a charge of sexual assault against his or her spouse at any of the three levels.
3. This isn't spelled out very clearly in the textbook. If you studied the excerpts from the *Criminal Code* on page 137, you will have noticed the situations where consent isn't deemed to have been obtained—for instance, where the complainant expresses a lack of consent or is incapable of consenting or where force or abuse of power is used.  
  
But what if a husband wrongly, but sincerely, believed that consent was given? The fact is that a husband can sometimes use a belief in consent as a defence since there must be an intent to commit a crime. The court must then consider the reasonableness of the husband's belief in his wife's consent.
4.
  - a. civil trial
  - b. civil trial
  - c. criminal trial
  - d. civil trial

5. These remedies all take time to put into effect. For instance, to get a peace bond, you must first “lay an information” at the police station (or with the clerks’ office of the Provincial Court—Criminal Division); then you and the person you’re accusing must appear in court to make your cases before a judge. This works well in some situations, and it’s fair to both parties, but in an emergency situation it just isn’t adequate to protect the safety of the victim.
6.
  - a. She should phone the police; the fastest and simplest way is to call 911.
  - b. This will, of course, depend on aspects of Kaitlyn’s situation that you haven’t been told. At the very minimum, she should ask the judge to restrain Gabriel from being near specific places at specific times where he might be able to harm her. To this end, she should list places where Gabriel isn’t allowed to go—like her home, her place of work, and the homes of friends. She should probably also ask for exclusive possession of the home. It would also be a good idea to ask for a police officer to escort Gabriel off the property and to seize any weapons that Gabriel has used or has threatened to use—or might conceivably use. Finally, she might ask that the judge restrain Gabriel from contacting her.

Did you think of other ideas?

7. An emergency protection order is issued very quickly and without giving the person against whom it’s issued a chance to have his or her say. It’s very possible that once a judge hears both sides of the story and has time to consider all the factors, he or she will come to a very different conclusion about what steps are appropriate.
8.
  - a. An emergency protection order is available anytime, day and night, simply by calling the police and requesting one. It must be reviewed within seven days, but meanwhile it affords fast protection. It’s available to the wide range of family members defined in the *Protection Against Family Violence Act*.
  - b. A Queen’s Bench protection order can follow the review of an emergency protection order or it can be requested in a non-emergency situation. It can cover all the issues that an emergency protection order can—and then some—and can stay in force up to a year. It’s available to the wide range of family members defined in the *Protection Against Family Violence Act*.
  - c. A warrant permitting entry allows the police to enter a place where someone may have been subjected to family violence. The police can ask for the warrant at any time if they’re denied entry to the premises.

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## Section 3 Conclusion



In this section you've looked at a variety of family-law issues. You've compared the rights of cohabiting couples to those of spouses, and you've investigated topics like grandparents' access rights, enduring power of attorney, and children's obligations to support their elderly parents. Finally, in Lesson 3 you looked in some depth at the problem of family violence and the legal recourses available to victims.

At this point in the course you should have a pretty good grounding in the basics of family law. In Section 4 you'll use this grounding to investigate challenging issues in family law and ask yourself if a career in this area might be a possibility for you.

# SECTION 4

## Issues and Careers



Do you think that same-sex couples should be allowed to legally marry and enjoy all the protection the law offers husbands and wives? Do you think that a woman unable to carry a developing fetus in her body should have the right to legally contract with another woman to bear her child? Do you believe that people should be allowed to write a “living will” stipulating that if they ever end up tied to a life-support system, they should be allowed to die naturally?

Issues like these constantly challenge the legal system, and they’ll be the main focus of this section. When you’ve completed the section, you should be able to describe several such challenging issues, and you’ll have researched one in particular. You should also be able to identify a number of career possibilities in the area of family law.

## Lesson 1: Challenging Issues in Family Law



The introduction to this section gave examples of issues challenging lawmakers in the area of family law. Of course, you've already looked at several such challenging issues as you worked through Sections 1 to 3. Three of the principal ones were

- the ongoing attempt to have child-support laws that are fair to both parents and a workable system to enforce those laws across the country
- the problem of family violence, as illustrated in the Government of Alberta's recent passage of the *Protection Against Family Violence Act*
- the issue of rights and obligations for cohabiting couples and other people in relationships of interdependence, as shown by the passage of Alberta's *Adult Interdependent Relationships Act*

In this lesson you'll briefly examine several more controversial areas of family law. You'll look at the issues from both sides and think about the pros and cons of contrasting positions. Then you'll choose one issue in particular that interests you and do some research into it on your own. These issues all have strong moral and, possibly, religious dimensions; and though the emphasis here will be on the legal aspects, it will be impossible to consider these without first thinking about their moral underpinnings.

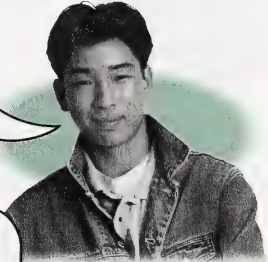
What follows, then, is a brief look at several controversial issues.




# Challenging Issues

## Personal Directives and Living Wills

Have you ever considered the possibility that someday you might end up in a coma and on a life-support system in a hospital with no realistic hope of recovery? It's not a pleasant thought, but the possibility is always there. In days gone by, of course, the problem didn't exist—or not to the same degree—because we didn't have the technology that's available today to keep people alive. If you were in this situation, unable to communicate your wishes, what would you want your doctor to do?



That's easy. I'd want my doctor to pull the plug and let me die with a bit of dignity. Why hang on for years, putting a terrible strain on your family—not to mention the health-care system—when you're unconscious and can't get better?



I disagree. I don't believe human beings have the moral right to take their own lives any more than another person's life. That decision is up to a higher power. Besides, miracles do happen sometimes. Are we ever certain there's no chance of recovery?

Some people try to deal with this problem by drawing up what are called **personal directives**. Personal directives, along with enduring powers of attorney, make up **living wills**.

**personal directive:** a document instructing a doctor on the medical treatment you want if you end up unable to communicate

A personal directive is simply a document intended for your doctor that specifies the medical procedures you want followed if you ever end up in a position like this. Most people who draw up living wills instruct their doctors not to prolong their lives with life-support equipment if there's no real hope of recovery. Rather, they'd prefer to die naturally and peacefully.

**living will:** a personal directive combined with an enduring power of attorney

An Alberta statute known as the *Personal Directives Act* allows people to draw up personal directives. In these documents, people can appoint agents to make decisions for them that relate to their personal lives if they're ever unable to make such decisions themselves. These decisions can relate to such matters as health care, accommodation, employment, and legal matters of a non-financial nature (financial matters, remember, can be dealt with by way of enduring powers of attorney). Guidelines to be used in making these decisions can be included in the directive.

Personal directives in Alberta often include a guideline like this one:

I do not wish my life to be prolonged by artificial means when I am in a coma or a persistent vegetative state and, in the opinion of my physician or other consultants, have no known hope in regaining awareness and higher mental functions, no matter what is done.

**euthanasia:** the putting to death, as an act of mercy, of people with incurable diseases or in constant, untreatable pain

Wordings in such clauses must be careful since anything in a personal directive that conflicts with the law will be considered invalid. In fact, the preamble to the legislation specifically states that requests for assisted suicide or euthanasia cannot be included in a directive. There's a fine line between asking that a life not be prolonged by artificial means and asking that it be terminated.

Of course, the debate on living wills ultimately raises the whole issue of suicide, doctor-assisted suicide, and euthanasia. These larger issues concerning life and death and doctors' moral and legal obligations to their patients are currently very much at the forefront of debates on human rights and medical ethics.

1. What are your views? Should personal directives and living wills—even those asking for assisted suicide or euthanasia—have the legal authority of normal wills? Support your ideas with reasons.



Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

### Going Further

Using a search engine and search terms like *living wills* or *personal directives, Alberta*, see what you can discover. You'll likely even find forms for sale.



## Surrogate Mothers

**surrogate mother:** a woman who carries the fertilized egg of another woman to term

Another legal controversy that's arisen because of modern technological advances is that of **surrogate mothers**. Sometimes couples who want to have children find they can't because the woman isn't physically able to bring a child to term. One modern solution to this problem is to extract an egg from the woman, fertilize it in a laboratory with her husband's sperm, and implant the fertilized egg into the womb of another woman who has agreed to carry the child and to give birth to it. When the child is born, he or she has, in effect, two mothers—a genetic mother and a surrogate mother.

Sometimes a surrogate mother is simply a friend or relative of the couple who has agreed to carry their child; more often, however, she's someone who has contracted to do this for payment. Either way, the legal question arises as to who the child's real mother is—the genetic mother or the woman who bore the child. Sometimes surrogate mothers become extremely attached to the children they've carried for all those months, and they don't want to give them up.



As you can see, the law has a problem here. Black's *Law Dictionary* defines a mother as "a woman who has born a child. A female parent." This definition was good enough before surrogate motherhood came along, but now it seems inadequate. A related question here is whether or not the law ought to recognize contracts for surrogate motherhood as legal. So far, there's no real answer to these questions, and different legal jurisdictions are dealing with them differently. Many haven't dealt with them at all.



Another type of surrogate motherhood occurs when a woman wants a child but can't conceive. In this case, she and her partner may find another woman who agrees to have her own eggs fertilized by the partner.



That makes things simpler. I mean, now this second woman is both the genetic and surrogate mother. There's no problem.



Except that the first woman and her partner contracted with her to give them a child—sort of like an adoption. Should such contracts involving human children be legal?

2. To learn more about the issue of surrogacy contracts, read pages 514 and 515 in your textbook. Then answer textbook question 3 on page 515. Set up your answer in a chart like the one that follows:

Surrogacy Contracts	
For	Against

Alternatively, if you're working in a classroom or have a study partner, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



## Same-Sex Marriages

As you read in Section 1, Canada has moved beyond the traditional definition of marriage as a “voluntary union of one man and one woman to the exclusion of all others.” Now two men or two women may legally marry and acquire all the rights and privileges of any married couple. This wasn’t, as you can imagine, a fast or easy change; it involved years of controversy and a series of court decisions, and even now not everyone is happy with the situation. While many Canadians are willing to grant homosexual couples the right to form what are sometimes called *civil unions*, there’s still some resistance to the idea that a true marriage can exist in the absence of a male/female relationship. Alberta’s Adult Interdependent Relationships (with which you’re by now quite familiar) are a sort of civil union.



In Canada, those in favour of same-sex marriages have argued that it’s discriminatory to refuse gay men and lesbians benefits taken for granted by other Canadians. Opponents, on the other hand, have maintained that marriage is in its very nature a union between a man and a woman and that its ultimate purpose is procreation(reproduction).

During the years leading up to the passage of the legislation in 2005 granting same-sex couples the right to marry, most of the legal (as opposed to the moral) arguments put forward by those favouring same-sex marriages were based on the *Canadian Charter of Rights and Freedoms*. If you’ve taken Legal Studies 1020, you’ll recall that this document, part of the *Constitution Act, 1982*, takes supremacy over all other laws in Canada. That means that if a court rules that a law in Canada contradicts the *Charter*, that law, or the conflicting part of it, is **unconstitutional** and, as such, isn’t valid. If, then, the laws that limit marriage to a union between a man and a woman are found to conflict with rights given Canadians in the *Charter*, those laws will be struck down.

**unconstitutional:**  
not in accordance  
with Canada’s  
fundamental law,  
the Constitution  
Act, 1982



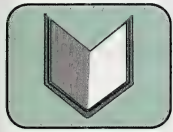
<sup>1</sup> Source: Department of Canadian Heritage. Reproduced with the permission of the Minister of Public Works and Government Services Canada, 2003.

Chapter 15 of the *Charter* contains this clause:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.<sup>1</sup>

Though this clause doesn't explicitly identify discrimination based on sexual orientation, remember that the types of discrimination the clause does list are included only as examples. Since the clause does say that every individual has the right to the equal benefit of the law, those supporting same-sex marriages have frequently based their case on it.

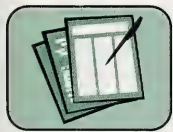
Your textbook contains a good deal of material on this very controversial issue, though it was published before same-sex marriages were legalized by an Act of Parliament. For this reason, the material is already out of date. Still, it can help you get an understanding of the issue and events that led up to the legislative change. To get some of the background information that will help you understand the lead-up to the 2005 legislation, read the related material on the following pages; then answer question 3 that follows.



- pages 89 to 91
- pages 394 and 395
- pages 396 and 397
- page 398
- pages 477 to 479, beginning with the case study *M. v. H.*

3. Here are three positions that have been frequently put forward during the debate about same-sex marriages:

- Homosexuals are human beings like everyone else, and as citizens of Canada they should enjoy the same rights as heterosexuals to form stable, respected marriages and thereby acquire all the rights and obligations awarded other married people. To deny this right is unconstitutional as well as unjust.
- Homosexuals should not be discriminated against; it's unconstitutional and unfair. However, marriage is by definition a union between a man and a woman. Same-sex couples should be able to form legally valid unions like Alberta's adult interdependent partnerships, thereby acquiring many of the rights of married people. They should not, however, be able to marry.
- Sexual orientation isn't mentioned in Section 15 of the *Charter*; therefore, defining marriage so as to exclude homosexuals is not *unconstitutional*. If two people of the same sex choose to live together, fine, but they shouldn't be awarded the same rights as heterosexual couples, and they definitely shouldn't be able to legally marry.



Pick the position that you most closely agree with and present a one-page position paper defending your point of view. If none of these positions adequately articulates your own thoughts, explain your own ideas on the issue and defend them.

Turn to the Suggested Answers at the end of this lesson  
and read the helpful hints suggested there.

<sup>1</sup> Canadian Charter of Rights and Freedoms. Reproduced with the permission of the Minister of Public Works and Government Services Canada, 2003.

## Abortion

It's likely that no other legal or moral debate has involved Canadians in recent decades as much as the abortion issue. You yourself very likely have strong views on this question based on your religious beliefs, your views on right and wrong, and/or your attitudes towards the issue of women's rights.

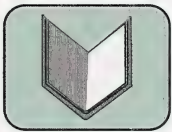
At one time, the *Criminal Code* contained a clause making abortion a criminal offence unless the procedure had been approved by a therapeutic abortion committee of a hospital. These committees approved abortions only if the mother's life or health were felt to be seriously at risk if the pregnancy were to continue.

In 1988, however, the Supreme Court of Canada ruled that these clauses in the *Criminal Code* were unconstitutional, and they were removed the following year. Ever since then, Canada has had no law on abortion. The question, of course, hinges on a woman's right to decide when and if she'll become a mother.

Those who support this right hold fast to the *Criminal Code's* assertion that a child becomes a human being only after it's born. As a non-human, of course, the fetus has no rights to conflict with those of the mother. Those opposed to a woman's right to terminate a pregnancy, by contrast, maintain that a fetus, as a developing human being, should enjoy the protection of the law offered everyone else.

For a bit more background on the abortion issue, turn to page 142 of your textbook and read the material under the subheading "Abortion," ending halfway down page 144. In your reading include the case study *R. v. Sullivan* as well as "Looking Back: Canada's Abortion Law." When you've completed this reading, answer the questions that follow.

4. In the case *R. v. Sullivan*, the Supreme Court ruled that the two midwives should not be found guilty for the death of the baby. On what basis was this decision reached?
5. How is this Supreme Court decision significant to the abortion issue?
6. Do you agree that a fetus shouldn't be regarded legally as a human being? Explain why or why not.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

## Unborn Children and Mothers' Rights

Related to the abortion issue is the question of the rights of a pregnant woman to do what she wants even if her actions are very likely to seriously harm her unborn child. This issue came to the attention of the public in 1996 when Winnipeg's Child and Family Services asked a Manitoba judge to order a woman addicted to sniffing solvents to be kept in a drug-treatment centre until her child was born. Two of the woman's previous children had already suffered permanent neurological damage because of their mother's addiction, and Child and Family Services wanted to keep this scenario from repeating itself.

Though the judge in this case wanted to protect the child involved, the fact that a fetus has no rights in Canada hampered him. He decided to have the mother put in an institution for her own protection, but this decision was later reversed and the mother was given her freedom. The Supreme Court of Canada ultimately upheld this decision.



I think I see the issue here. If a fetus isn't by law a human being, then how can it have any rights for the court to protect?

Exactly. And if the mother's actions were restricted because they might harm the fetus, how can other women be allowed to have abortions to end the lives of the fetuses they're carrying?

Yeah. Besides, if she's not allowed to do drugs for fear of harming the child, what about pregnant women who smoke or even have an unhealthy diet? Will the government step in and start regulating everything that they do?

Wait a minute! Everyone seems to be forgetting the kid. What if he or she is damaged for life? Surely there should be some way of protecting the fetus.





A similar case occurred in Ontario in 1996 when a pregnant woman shot herself in the abdomen with a pellet gun. The child was born with the pellet embedded in his brain, but the judge in the case that followed ruled that only Parliament could create legal protection for an unborn child. Since no such protection exists, the charges against the mother were dropped, even though her child had been seriously harmed.



It's a very thorny question, and one that Parliament has been reluctant to deal with.

7. Pretend you're the lawyer for either the defence or the prosecution in one of the two cases just discussed. Present your arguments in a coherent and persuasive manner.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

In 2005, Alberta drafted legislation that will allow children to sue their mothers for injuries suffered in the womb, but only if those injuries are the result of a car accident. This means that when the injured child is born, a case can be brought to court against the mother and, if the court finds that her negligence caused the accident, an award of damages will be made to the child.

Strange as it sounds, this is actually a good thing for the mother because it's her insurance company who will end up paying out whatever damages the court awards, and this money can help with the care the injured child may require. However, critics fear that this law will open the door to other sorts of possible cases that children will be able to bring against their mothers if they were harmed in the womb by the actions of their mothers. Will mothers who smoke or drink or do drugs one day be liable for the harm they caused their unborn children? It seems unlikely now, but the future is hard to predict.

## Research Project



Whew! That's quite a list of challenging issues. Your job now is to pick an issue of this sort in the area of family law and to do a small research project on it. The issue can be one covered in this course—or some aspect of one of those issues—or it can be something different, though you should get your teacher's permission if you're choosing something not mentioned here.

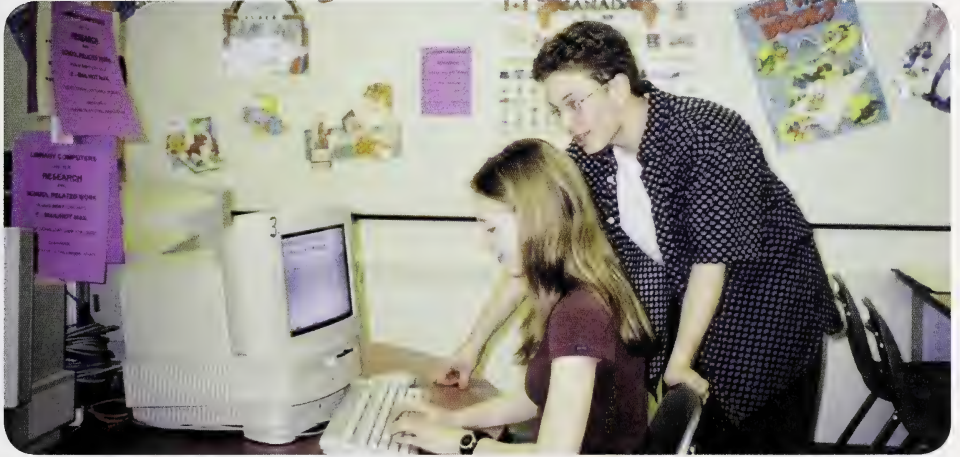


The good news is that the work you do now will prepare you for your Section 4 assignment, which will be to write up your research findings in a short report.





The challenging issues you've been introduced to in this lesson—coupled with topics you've looked at earlier in this course—such as child maintenance, family violence, cohabitation, and grandparents' rights—should have given you a wide range of topics for your project. And you might also check out the discussion of universal daycare and parents' rights to spank their children on pages 484 to 485 and 442 to 443 of your textbook, respectively. (If that last topic interests you, don't forget the discussion back in Section 1: Lesson 3 under the heading "Discipline.") Two other issues you might consider are public and private adoption and the debate over allowing midwives to deliver children.



Of course, the rapid development of new medical discoveries and technologies is constantly creating new issues for legislators that are, to some degree, related to the area of family law. Should human cloning be allowed? Should fetuses be created strictly for their stem cells—cells that can perhaps be used to cure a wide range of human diseases? Should children whose fathers were sperm-bank donors have the right to know who their fathers are?

The following article was published several years ago, but the issues it points to are more relevant than ever. Reading it may give you a few more ideas of an issue you'd like to investigate.

### Beyond Abortion

It is the closest thing to the miraculous most of us will ever know: the moment when an infant child, the embodiment of so many private hopes and fears, emerges wet, blue and bloody from a mother's womb, and with a cry of protest announces its new presence to the world. That is one reason why it is so difficult to feel removed from issues of human fertility and birth. There is an inescapable sense of meddling with the sacred.

Yet, increasingly, we do meddle. In part, we are

driven by the innately human instinct to protect our unborn young. But our growing understanding of the biological events that precede the miracle of birth also compels us. At a pace that astonishes and sometimes disquiets, medical science is shedding extraordinary new light on how babies come to be. Under that illumination, we are discovering powerful new tools for manipulating life during its first nine months—and, through genetic intervention, even before conception. We are reaching new understandings about how our behaviour as fathers

or mothers may harm our children even before we take them, newly born, into our arms. And in an echo of the unique mix of exhilaration and terror that strike the heart of every new parent, we find ourselves profoundly ambivalent about our new knowledge.

Several recent events in Canada and abroad have added to the disquiet. In Manitoba, a young woman addicted to sniffing solvents successfully fought off, at least for the moment, an attempt by child protection authorities to protect the five-month-old fetus she is carrying by forcing her into treatment. In Britain, employees of fertility clinics began to thaw and systematically destroy up to 3,300 frozen, fertilized human embryos—each one representing at least a potential human life—that were no longer wanted by the women and men whose genetic material created them. And in Ottawa, federal officials sought the public's views on proposals to bring a burgeoning traffic in the building blocks of conception—human eggs and sperm—as well as in fertilized embryos and fetuses, under regulatory supervision for the first time in Canada.

What those divergent developments shared—apart from their power to unsettle—was roots in our new thinking about the first 40 weeks of life. Accumulating research into the effects of alcohol, tobacco and even caffeine on a developing fetus—effects that range from smaller birth size to permanent brain damage and physical deformity—has sharply increased pressure on expectant parents of both genders to modify their behaviour.

Other medical innovations have even more dramatically changed our perceptions of the separate existence, moral standing and mutability of embryonic human life. Where once upon a time parents waited eagerly for birth to reveal the sex of their child, physicians can now select, from among half a dozen embryos fertilized outside the womb, the one that possesses chosen characteristics of gender or resistance to disease. Not satisfied to choose among the random genetic combinations of in vitro fertilization, other researchers are exploring ways to remove or insert individual genes into the 46 chromosomes that constitute the biological blueprint of each individual, hoping one day to weed out those responsible for genetic defects. The ability to store and transport embryos far from a mother's body without significant constraint, and to reimplant them later—often in the body of a different woman entirely—has created a new and ethically dubious commerce in potential human begins.

Still more disquieting developments lie just ahead. Japanese scientists have successfully used an artificial womb to gestate a goat. Their next step: the development of a human version. Other researchers have confirmed the feasibility of human cloning, although none has publicly acknowledged trying to bring cloned embryos to term as identical babies. Only slightly more speculative is a nightmarish but technically feasible procedure to extract eggs from aborted fetuses and fertilize them with sperm harvested from a cadaver—to create children of the dead and the never-alive. Not possible yet but likely soon to be: designer offspring created by selectively implanting genes for desirable attributes like intelligence or size. "When you think of the implications of what we're going to be able to do," reflects Roger Rittmaster, an endocrinologist on the faculty of Dalhousie University in Halifax and a former president of the Canadian Fertility and Andrology Society, "it really is pretty interesting and scary."

Advancing science has left the law in the dust. On the narrow question of a woman's right to an abortion, Canadian legislation has been silent since 1988, when the Supreme Court of Canada struck down the last law to restrict the practice. Three years later, the court found that a fetus, legally speaking, is without rights. But "rights" turn out to be different from society's "interests" in the same bundle of tissue. In draft legislation tabled in the House of Commons in June, the Liberal government moved to create an array of new protections for the latter. The *New Reproductive and Genetic Technologies Act* would ban 13 controversial practices, including the sale of human embryos. Circulating among physicians and interest groups last week were draft regulations that will follow if the act is passed. They would create a new federal authority to license nonprofit sperm banks and qualified researchers who wish to experiment with embryos less than 14 days old. Underlying the new legislation, Health Minister David Dingwall asserted, are two principles that reflect Canadian values: respect for the dignity of the human body, and a prohibition on commerce in human fertility.

But grey areas loom. Take pregnancy. Many would argue that no experience is more unequivocally a woman's natural right. But the lawyers who represented Winnipeg Child and Family Services in their application last week to force a glue-sniffing mother into a treatment centre are not alone in arguing that society is sometimes justified in dictating

how a pregnant woman conducts herself. While a woman may have an unqualified right to choose whether to continue a pregnancy, says University of Manitoba law professor Bryan Schwartz, others have a legitimate stake in the fetus's health once she has chosen to carry it to term. For reasons both of compassion and economics—given the daunting costs of caring for a severely handicapped infant—he asserts that “society has an extremely high interest in protecting that child from preventable damage.” Further, Schwartz argues that if a pregnant woman refuses to give up behaviour that is certain to injure her child, “in rare and exceptional circumstances there has to be coercion” to protect the fetus.

Many feminists strongly disagree. Christine Overall, a professor of philosophy at Queen’s University in Kingston, Ont., admits that “I feel the revulsion, too,” at the horrific possibility of a woman subjecting her fetus to the effects of solvent abuse. But, she adds, “I nonetheless wonder what this might imply about the surveillance and possible future incarceration of other women. How many are you willing to lock up? How far are you willing to go?”

If that line is difficult to draw, then so is another. By its silence on abortion, Canadian law effectively allows a woman to undergo the procedure for any reason she thinks fit. But the expanding scope of prenatal diagnosis and genetic testing is providing women with ever more reasons to at least consider ending a pregnancy. Many might well choose to do so if they learned that their fetus carried a gene for

rheumatoid arthritis, epilepsy or breast cancer. But what if the genetic marker were for some lesser problem, short-sightedness, say, or male-pattern baldness?

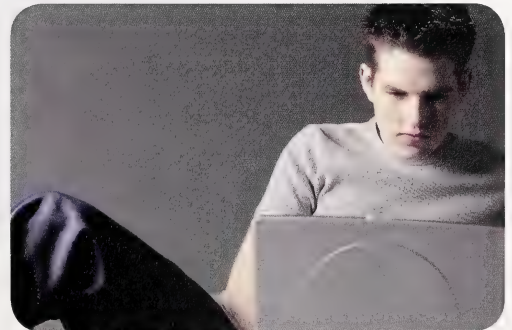
Eight years after the Supreme Court of Canada settled a woman’s right to an abortion, defiant protesters still picket daily outside clinics in Vancouver and Toronto. And in the United States, the issue is expected to divide Republicans gathered in San Diego this week to nominate Bob Dole for president.

Meanwhile, some procreative options soon to be banned in Canada are readily available across the border. Ottawa would make it illegal to pay a woman to carry an implanted fetus on behalf of someone else—a practice known as surrogate motherhood. In the United States, surrogacy is viewed as just another fast-growing service industry. Infertile couples pay an average of \$60,000 to have an embryo—usually fertilized in vitro—carried to term by a woman who typically receives less than a quarter of that fee. Prohibited from doing the same here, Rittmaster predicts: “Women will go and get surrogate mothers in the United States.”

Scary and interesting indeed. Like first-time parents determined to do the best they can for a miraculous new life, we have little apparent choice but to go forward—praying that our wisdom will somehow keep pace with our exhilarating—and terrifying—new knowledge.

To get started on your project, you’ll first have to select an issue that interests you and start digging into it. Your librarian and your Legal Studies teacher should be able to give you some direction here. If you have back issues of newspapers and newsmagazines like *Maclean’s*, they would likely be a good place to start your research. The magazine *LawNow* would also be an excellent resource. Of course, you can also contact agencies like the Office for the Prevention of Family Violence for literature.

But your best source of current information on a wide range of issues will in all likelihood be the Internet. Using a search engine and search terms taken from the issues that interest you, you should have no trouble finding material for a short report.



<sup>1</sup> Chris Wood, “Beyond Abortion,” *Maclean’s*, 19 August 1996, 14–15. Reproduced by permission.

Bear in mind, of course, that not everything on the Internet is true; anyone is free to post just about anything. This means it will be up to you to assess the trustworthiness of the sources you discover. Checking back at web addresses given in Going Further activities throughout this course will give you a good number of reliable sites to get started with.

Another wonderful way to get information is to talk with people who are knowledgeable in the area. If you can arrange an interview with a lawyer, a social worker, an activist in an area such as women's rights or abortion, or anyone else who can help you with your research, by all means, take advantage of it. For tips on conducting an interview, see the Going Further activity at the end of this lesson.

In your research, try to focus on the situation in Canada (and Alberta), but if you can discover how other countries or provinces are dealing with the problem, so much the better; it will give you grounds for a comparison and probably suggest alternative solutions.

When you finally write up your report for your assignment, it should include these elements:

- an explanation of the issue
- a discussion of the current law in Canada (or Alberta)
- if possible, a look at the law in another country (or province)
- your own views on what lawmakers should do to solve the problem

Your report doesn't have to be long, but it should show that you've done both some research and some thinking about the problem you've selected.



## Going Further

The lesson you're now working on asks you to do some research into a challenging question in family law, whereas Lesson 2 will encourage you to research employment opportunities in family law. In either one of these projects, you may find that an excellent way to get the information you're after is to conduct an interview—with a social worker, a lawyer, or anyone related professionally to—or simply knowledgeable about—the area you're researching.

Students often find arranging and conducting an interview a difficult thing. The material that follows is designed to give you a few simple pointers that should help you with the process.

When you arrange the interview, try to find a time when the person isn't usually very busy. You'll be able to get much better information if he or she isn't rushing to get back to work. Also, plan your interview to take no more than 10 or 15 minutes and stick to that schedule. Get your information, thank your interviewee, and let him or her get back to work.

- Prepare beforehand. Have all the questions you want to ask written down in logical order. Concentrate on questions that are specific to the topic you're investigating. Be brief and to the point.
- If you're conducting the interview in person, be sure to dress appropriately. A well-groomed, professional appearance will make people take you more seriously, and they'll be more willing to give you their time. Always leave the best impression possible.
- Listen carefully, and take notes. If you wish to record the interview on audiotape, be sure to get permission first from your interviewee.
- If you choose to make contact by mail or e-mail, include an introduction of yourself and this course, your specific questions, instructions as to how the person can respond (your address or telephone number), and a brief word of thanks. The letter should be neat and professional-looking, and it should follow standard business-letter format.
- After the interview, thank the person for taking the time to share his or her background with you. Let your interviewee know that the information will be helpful to you. A follow-up thank-you note to that person, letting the interviewee know how helpful the interview was, is a courtesy that will make an excellent impression.

And that's the end of Lesson 1. Lesson 2 will involve something completely different—a very brief look at a few possible career areas related to family law.

## Suggested Answers

- Answers will vary. Can you see both sides of the issue? Were you able to support your ideas with sound arguments?
- Textbook question 3:** Answers may vary a bit. Here are some arguments for each side of the issue with which to compare your own answers.

Surrogacy Contracts	
For	Against
<ul style="list-style-type: none"> <li>• They allow couples—or, at the very least, one of the partners—to have their own children.</li> <li>• Legal contracts, where each side gains something, are fairer than situations where a friend or relative is pressured into being a surrogate mother.</li> <li>• Legal contracts prevent custody lawsuits once the child is born.</li> <li>• Women should have the choice to become surrogate mothers, and they deserve to be paid for their services.</li> </ul>	<ul style="list-style-type: none"> <li>• Contracts should involve goods and services, not human lives. Children aren't commodities.</li> <li>• Surrogacy contracts often exploit women with little money and/or education.</li> <li>• Surrogate mothers face risks, and they might be pressured to continue a dangerous pregnancy.</li> <li>• Surrogate mothers often experience psychological problems when called on to give up a child to whom they've given birth.</li> </ul>

- Answers will vary. The important thing is that you put aside any prejudices you might have one way or the other and thought about the issue clearly—and then that you articulated a position and defended it. Do you think your defence would stand up against a challenge from another position?
- Since the child died before it was born, it was still a fetus and not a human being according to the definition in the *Criminal Code*. As a fetus, the child had no rights, so technically no crime could be committed against it. Therefore, the two midwives were acquitted.
- This decision reinforces the principle that a fetus doesn't become a person in the legal sense until it's entirely born, which supports those in favour of a pregnant woman's right to decide on her own whether or not to abort the fetus she's carrying.
- Answers will vary. If you support a woman's absolute right to have an abortion, then you really have to agree that a fetus isn't human; if it were, it would have rights of its own and a woman who chose to terminate her pregnancy would be guilty of a crime against the child. On the other hand, if you believe that a fetus should have the rights accorded other human beings, you can't very well support abortion on demand, which would mean that women would lose a great deal of control over their own bodies. It's a difficult issue, isn't it?

7. Answers will vary. These are very difficult cases, aren't they? No one likes to see a child seriously and permanently damaged through his or her mother's behaviour; but once a fetus is granted legal rights, there are tremendous implications, especially for the abortion issue. The case of the solvent-sniffing mother is complicated by the fact that she wasn't deliberately trying to harm her child. One has to ask, if the law stepped in in this case, what might happen regarding other things an expectant mother might do? Would pregnant women be guilty of a criminal offence if they drank coffee or smoked?

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## Lesson 2: Careers in Family Law



Have you ever thought about a career in the area of family law? The fact that you're taking this course likely means that you have some interest in family law, though of course, that interest may not necessarily extend as far as thinking of a career in the area. In case you are considering career possibilities, however, this short lesson will give you a starting point from which to investigate—or at least think about—employment opportunities.

You won't be assigned any career investigations in this lesson; the research you'll be doing for Lesson 1 should be enough for one section. The intent of this lesson is only to get you thinking a little and possibly to provide some direction for your own investigations if you choose to undertake any. Your textbook offers some help here, but only a very little. Fortunately, if you're interested, the Internet, your library, universities and colleges, and people working in the fields that interest you can supply you with much of the information you need.

### Lawyers and Judges

When you think about careers in law, you probably think right away of lawyers and judges. Certainly, many lawyers today do specialize in family law, and some of them will eventually become judges in Alberta's Provincial Court, Family Division (or Family Court, as it's often called) or a higher court.

To learn a bit about what's involved in being a lawyer, open your textbook to page 596 and read the short paragraph there under the subheading "Lawyer."





As your textbook tells you, some lawyers are self-employed, and this is generally the case with those interested specifically in family law. Lawyers in general private practice may handle some family-law cases, while others will specialize in family law and do little or nothing else.

But becoming a lawyer isn't easy. Normally, you need an excellent academic record of two-to-three years of university—or, in some cases, an undergraduate degree—to be accepted into law school. Then you enter a three-year Bachelor of Laws degree program, followed by a year of articling with a law firm—that is, working in an apprentice-like position. Then you must take—and pass—the bar exam set by the law society of your province. If you pass, you're ready to "hang up your shingle" and practise law.

Many people's ideas of what a lawyer's life is like come from television, the movies, and perhaps John Grisham novels. This life usually seems full of dramatic courtroom appearances and last-minute witnesses. In actual fact, much of a lawyer's time is taken up working with clients, researching laws, and preparing highly technical legal documents like wills, separation agreements, and divorce papers. Lawyers are paid by their clients to supply sensible, well-informed legal advice; to prepare cases; and, sometimes, to appear in court or before tribunals and administrative boards.

What personal qualities do lawyers need to have? Well, they must be patient people capable of researching often difficult-to-understand laws and court decisions. They must be able to analyze complex situations and to use their knowledge of the law to come up with good decisions and advice. In the courtroom, they must be persuasive, confident, and convincing. They must be able to work with deadlines. Family-law lawyers, in particular, must be capable of working with clients who are going through particularly difficult times in their lives. Compassion and understanding—and a real desire to help—are prerequisites. And this is perhaps even more true of those lawyers who go on to become judges.



Lawyers also have to be able to fight for their clients as hard as they can—even if they suspect that the other party isn't being treated fairly or maybe that that person's lawyer isn't doing a good job. I could never do that.

It's true that when a lawyer is retained—or hired—by a party in a dispute, the lawyer is committed to doing whatever is legally possible to further the interests of that party. It's done on the conviction that the other party's lawyer is doing the very same thing and that only in this way can a judge and/or jury see both sides to their best advantage.



That's right. My aunt is a lawyer who's often in court, and she says that any lawyer who doesn't do that is really prejudging the client before he or she ever gets into the courtroom. If a case gets to court, you have to do your best and let the judge or jury decide.



1. Based on what you've read and what you know from other sources, do you think you might have the qualities to someday become a family-law lawyer or perhaps even a judge? In answering, think about the educational requirements, the demands of the job, and your own personal aptitudes and skills. Consider, as well, whether or not you'd enjoy doing this sort of work.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

## Legal Secretaries, Paralegals, and Notaries Public

Lawyers and judges have a high profile in our society, though that profile is often badly distorted by television and movie portrayals. But, of course, lawyers and judges don't work in isolation; they're supported by a variety of people in their offices and the courts. One such supporting job profiled in your textbook is that of the legal secretary.

Legal secretaries are administrative assistants who specialize in legal matters. They work in lawyers' offices (and sometimes legal departments of other businesses like banks and real-estate companies) running the day-to-day operations. Legal secretaries are often responsible for things like scheduling appointments, organizing meetings, preparing and proofreading correspondence and legal documents, and maintaining records. Long-time legal secretaries generally require an excellent first-hand knowledge of the legal business even though they lack most formal training in the law.



Today, colleges offer diploma programs for people wanting to become legal secretaries. Good legal secretaries often end up running just about everything that goes on in a law office that doesn't absolutely require the attention of the lawyers themselves, so they must be efficient, capable people with excellent organizational skills and a willingness to learn. They must be excellent communicators, flexible, and adaptable—though they must also be organized and able to maintain a routine that can become repetitive.

2. Make a chart like the one that follows. In the left-hand column, list the qualities and skills needed by a legal secretary (basing your ideas on what you've read here and your own knowledge); then, in the column on the right, check off the ones you think you have or could easily acquire. When you've completed your chart, decide whether this would be a likely career option for you.

Legal Secretary	
Qualities and Skills	Your Suitability

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Other people employed in law offices include paralegals and notaries public. Paralegals, like legal secretaries, assist lawyers in doing such things as preparing documents, keeping records, researching records and files, and interviewing clients. Notaries public do things like drafting contracts, wills, and other documents, administering oaths and taking affidavits, witnessing signatures, and administering the estates of deceased persons.

**affidavit:** a written statement that is sworn under oath to be the truth



For a bit more information on paralegals, read the paragraph under that subheading on page 596 of your textbook.

### Going Further

The federal Department of Justice maintains a web page devoted to people thinking of careers in that area. The address is

<http://canada.justice.gc.ca/en/dept/ri/>

One thing you'll find there is a description of a paralegal's job along with profiles of real people doing paralegal work. You might find it interesting to take a look. Click on the link "Paralegals at DOJ."



## Family-Law Specialists



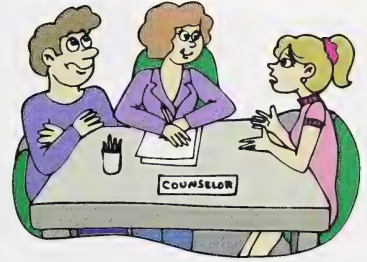
Over and above lawyers and others who work in law offices, family law offers career possibilities in a number of other areas. These areas aren't always directly related to the legal aspects of family law, but they're vitally important in helping people who are going through difficult times.

In Alberta, many people are employed by the provincial government to help see that things function smoothly and efficiently in the court system and that people involved in disputes over custody, access, and support payments get the help and advice they need. Others work directly with troubled families. Social workers, counsellors, and mediators provide a variety of services to help people with the often complex procedures and stressful negotiations involved in legal disputes in the area of family law.

To give you an idea of the sorts of jobs available in this area, here are two brief profiles:

- *Family court counsellors* are counsellors to whom judges can refer people, but individuals needing advice or assistance can approach them on their own as well. You don't have to be involved in the court process to make use of the services of a family court counsellor. Counsellors must be able to help people by explaining their rights and the alternatives open to them. Specifically, they have to be able to provide information on support payments, custody, and access, and they are often called upon to help people filling in applications to the court, to accompany people to court, and to take "informations" (forms that start the investigation process) for incidents involving mental-health-commitment issues, assaults, threats, or non-support.

- *Mediators and conciliators* provide family counselling and divorce mediation. These people provide personal counselling for people whose marital disputes have developed to the stage where a lawyer or court has become involved. To use their services, a person must be referred by a lawyer, a family court counsellor, or a judge.



To learn a bit more about the roles of counsellors and mediators, read the material under the appropriate subheadings on page 411 of the textbook. Then answer the following questions.

3. In the area of family law, a mediator is a neutral third party who helps divorcing couples resolve issues such as custody, access, and support payments in order to avoid a costly—and probably traumatic—courtroom battle.
  - a. What personal qualities and skills do you think a mediator should have?
  - b. Do you think you might make a good mediator? Why or why not?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Alberta Children's Services employs many people to administer statutes such as the *Child, Youth and Family Enhancement Act*. Many of these employees are social workers—the people out on the front lines, dealing with families in crisis and children in need of protection. They clearly have to be compassionate people who genuinely care about those they're there to protect, but they also have to be tough-minded individuals who can do what's necessary to deal with the dreadful situations they regularly encounter.

For a bit more information on what's involved in social work, see the relevant discussion on page 411 of the textbook.

And that's your very brief look at a few career possibilities in the area of family law. If you're genuinely interested in learning more about job possibilities in this area, the material you've just read may be of some use to you. If you'd like to investigate further, here are a few more career areas you can look into:

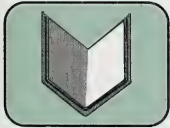
- the Public Trustee
- the Child and Youth Advocate
- Surrogate Court staff
- the Public Guardian



The Internet will provide you with an excellent means of learning more about what these various agencies do. Start with a search engine and use appropriate search terms, or perhaps go directly to the Alberta government website at

**<http://www.gov.ab.ca/home/index.cfm>**

Once there, click on the "Government-at-a-Glance" link.



## Going Further

Try **one** or **both** of the following:

1. In this lesson you've been given some information that might get you started on research into careers in the area of family law. If you are thinking of a career in this area and you'd like to do some research, one thing that you might consider doing is a job profile for one or more of the jobs you find particularly interesting.

A job profile is simply a chart on which you can record the basic information you gather in an easily accessible manner. Of course, you can make up a job-profile chart to suit yourself, but what follows is a standard one that will serve you well, followed by a brief explanation. You can vary the size of the boxes to accommodate the information you've acquired.

Job Profile	
Job Title	
Educational Requirements	
Aptitude Requirements	
Skill Requirements	
Functions/Responsibilities	
Employment/Advancement Opportunities	
Salary Range	
Benefits and Drawbacks	
Resources Used for Research and Future Reference	

Now here's a brief explanation of each of the boxes on your chart.

**Job Title.** Give either the official or the commonly used title for a person who carries out the duties involved.

**Educational Requirements.** Outline the level of formal schooling/education necessary for the position: College diploma? University degree?

**Aptitude Requirements.** Explain the personal qualities a person should have to be successful at this job.

**Skill Requirements.** Explain the skills a person needs to be successful at this job.

**Functions/Responsibilities.** Identify the principal tasks this position involves.

**Employment/Advancement Opportunities.** Explain just how good the prospects are for obtaining work in this area. As well, describe at least one position or opportunity that a person who's successful in this position might move on to.

**Salary Range.** Give the general range of salaries available to people doing this work.

**Benefits and Drawbacks.** Comment on the suitability of this job according to your own needs and interests. How would this position suit you? In what ways might it be less than ideal?

**Resources Used for Research and Future Reference.** List the sources you discovered and the people you contacted to acquire your information along with other places you could go in the future to learn more.

2. One of the best ways of learning about a job that interests you is to interview someone who actually does that job. An even better way is to do some job shadowing. Job shadowing involves spending a day or longer with someone as that person actually goes about the day-to-day business of his or her job.

Of course, this means first locating and contacting a suitable person and getting permission to do some shadowing. For this reason, if job shadowing interests you, it's probably best to arrange things with the help of your teacher or career counsellor; but if you're on your own, it is something you can do yourself if you're willing to make the necessary contacts and set things up.

Job shadowing is a wonderful way to get a first-hand look at what an occupation or position actually involves. Carefully watching someone actually doing a job—and, whenever possible, discussing what he or she is doing—will give you a much more accurate feeling for the job than reading or hearing about it can ever do.

If you're genuinely interested in learning more about working in the area of family law, try to arrange a day or two that you can spend with someone on the job. This will involve writing or telephoning a law office, a government agency, a charitable organization, or a private business; explaining that you're a Legal Studies student; and politely requesting a chance to shadow a worker on the job. You may be turned down by some people you approach; they may simply feel that they or those who work under them are too busy at the time. However, if you keep trying, you should find someone willing to spend the time with you that you require. After all, most people would be flattered to learn that a student found their job interesting enough to want to spend time with them as they went about their daily tasks.

Once you've set up a job-shadowing situation, here are a few things to bear in mind if you're to get the most out of it that you can:

- Take notes of what the person does. The form that follows shortly might come in handy.
- Keep asking yourself if you'd enjoy doing these kinds of tasks.



- Whenever you get the chance, record your own feelings about the job.
- Be sure not to get in the way of the person doing the job and other workers in the area. Don't ask questions while the person you're with is working; jot them down and ask them at the first convenient opportunity.
- Find out whether the day or days you've witnessed are typical. Ask what other tasks the person normally does.
- Find out how much the person's day-to-day tasks have changed in the last few years. Ask how the person thinks they'll change in the years to come.
- Thank the person you've shadowed when the project is over. It's always a good idea to follow up with a brief thank-you note a day or two later.

Here's the sort of form you can create for a job-shadowing project. Feel free to modify it as you see fit.

Job-Shadowing Information		
Position Title: _____		
Name of Person Shadowed: _____		
Time	Tasks Carried Out	Comments and Observations
Hour 1		
Hour 2		

When you've finished your job-shadowing project, write up what you've learned about the position in a report. Include things like

- the duties the job entails
- the hours worked
- the skills the job requires
- the training needed for the job
- the personal qualities and aptitudes the job makes use of
- what you liked about what you saw
- what you didn't like
- your own suitability for the position

## Assignment

Now open Assignment Booklet B and answer the question asked in the Section 4 Assignment.



## Suggested Answers

1. Answers will vary. Many people have the ambition of becoming a lawyer, but to do so takes a lot of commitment and hard work. Like any professionals, lawyers are expected to stay current in their field and to consistently measure up to exacting standards. It's not a career for everyone, but if you think you have what it takes, there's no reason you shouldn't set your sights on becoming a lawyer.
2. Answers will vary; the right-hand column of your chart will, of course, be entirely personal. A few things you might have listed in the left-hand column are
  - computer and keyboarding skills
  - communication and interpersonal skills
  - organizational skills
  - precision and an ability to pay attention to details
  - supervisory skills
  - ability to work on a tight schedule
  - office skills
  - writing skills
  - flexibility and adaptability—along with an ability to do routine work
  - ability to work on part of a team
  - some knowledge of accounting

Did you think of any other skills or aptitudes?

3. a. Answers will vary. A few things you might have mentioned are
  - communication skills
  - an ability to see both sides of an issue
  - an ability to stay calm and emotionally neutral
  - problem-solving skills
  - patience
  - an ability to engender trust
  - compassion and a genuine desire to help people in a time of difficulty

Did you think of anything else?

- b. Answers will be personal. Did you give your reasons?

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## Section 4 Conclusion



In Section 4 you've looked in some depth into one issue that's currently challenging lawmakers in the area of family law, and you've looked more superficially at a number of other such challenging issues. You've also briefly examined some career possibilities in the area of family law, and, if you're interested in working in this area someday, it's possible that you've investigated one or two jobs in greater depth.

# LEGAL STUDIES 2010 SUMMARY



And that's the end of Legal Studies 2010. If you came to this course having taken Legal Studies 1010, you will have brought with you some basic knowledge of family law in Alberta. You should now have expanded that knowledge and improved your understanding of family-law issues. If you haven't taken Legal Studies 1010, it's likely that you were starting your family-law studies from scratch. In that case, it's to be hoped that you now have a solid basis in Alberta's (and Canada's) laws as they relate to family matters.

Family law is in a constant state of flux; even as this course was being prepared, laws were changing and legislation was being debated. Don't make the mistake of thinking that you now know all you need to know for the rest of your life in this legal area. If, in the future, you find yourself involved with legal problems relating to the family, make sure you find out what the law is at that time; you should now have a good idea of how to acquire information of that sort. If the issue is at all serious, be sure to consult a lawyer.

Consider what you've learned in this course as a solid starting point from which you can go on improving your knowledge of family-related legal matters. If you follow issues in the media and make a point of keeping up to date, you need never again feel confused by the laws, issues, and discussions that concern the family and its role in our changing society.

# CONGRATULATIONS

Congratulations on completing Legal Studies 2010! We hope you've enjoyed taking this course and that you've found it both interesting and rewarding. If you have, perhaps you'll consider taking another Legal Studies course in the future.



# Glossary

**access:** the right of a non-custodial parent to visit a child and enquire about important issues in his or her life

**adultery:** voluntary sexual relations between a married person and someone other than that person's spouse

**affidavit:** a written statement that is sworn under oath to be the truth

**affinity:** a relationship created by marriage

**agent:** a person given the legal power to act on another's behalf

**age of majority:** the age at which a person is legally regarded as an adult—in Alberta, 18

**annulment:** a court order declaring that a marriage is void and never really existed

**civil law:** the branch of law that governs the relations between individuals

**cohabitation:** the state of living together as spouses though not legally married

**cohabitation agreement:** a contract between cohabiting partners outlining their obligations to each other and the ownership of their property; sometimes called a *cohabitation contract*

**collusion:** the agreement between a couple to deceive the court in a divorce hearing

**common-law union:** an informal term for the relationship of a couple who live together—in most respects as if married—but who haven't gone through a legal marriage ceremony

**condonation:** the forgiving by one spouse of behaviour on the part of the other that would otherwise provide grounds for divorce

**connivance:** the permitting or encouraging of one spouse by the other to do something that would provide grounds for divorce

**consanguinity:** a blood relationship

**consideration:** something of value exchanged by the parties to a contract

**co-respondent:** in a divorce case, a person charged with having committed adultery with the respondent

**criminal law:** the branch of law that sets out certain acts as crimes and punishes those acts

**custodial parent:** the parent awarded custody of a child

**custody:** the legal right to care for and control a child

**damages:** money awarded by a court to a plaintiff in a civil action to compensate for a wrong suffered

**desertion:** the physical absence of one spouse with the intention not to return

**divorce:** the legal dissolution of a marriage

**duress:** the compelling of a person to do something against his or her will by means of force or the threat of force

**enduring power of attorney:** a legal document giving an agent the right to look after your financial affairs should you become unable to do so

**estate:** the entire collection of assets a person owns at death

**ethanasia:** the putting to death, as an act of mercy, of people with incurable diseases or in constant, untreatable pain

**extended family:** the family that goes beyond husband, wife, and child to include relatives

**family violence:** any behaviour by one family member against another that may endanger the person's survival, security, or well-being

**garnishee:** to legally withhold all or part of a debtor's wages each wage period and pay them to the party owed money until the debt is paid

**intestate:** lacking a will at death

**joint custody:** a court order giving both parents legal responsibility for important decisions regarding their child

**justice of the peace:** a judicial officer who does such things as issue arrest warrants, administer oaths, and deal with the release from custody of people accused of crimes

**living will:** a personal directive combined with an enduring power of attorney

**marriage:** the legal union of two people (historically of a man and woman) to the exclusion of all others

**marriage contract:** a contract between spouses outlining their obligations to each other and the ownership of their property

**matrimonial home:** the home in which a married couple lives

**matrimonial property:** property acquired by spouses during their marriage

**mediation:** an attempt on the part of a third party to get two opposing parties to reach an agreement

**mobility rights:** the freedom to move around the country and live in different places; specifically, the freedom of a custodial parent to move out of the province

**non-custodial parent:** the parent denied custody of a child (but usually required to provide financial support)

**peace bond:** a court order requiring a person to keep the peace and obey any conditions the judge sees fit to impose

**personal directive:** a document instructing a doctor on the medical treatment you want if you end up unable to communicate

**petitioner:** in a divorce case, the person who applies to the court for the divorce

**petition for divorce:** the request, made to a court, for a divorce

**power of attorney:** a document giving another person authority to act on your behalf

**respondent:** the person from whom a petitioner is seeking a divorce

**restraining order:** a court order requiring a violently abusive person (often a spouse or partner) to stop molesting, annoying, or harassing another party

**separation:** the partial ending of a marriage whereby the spouses no longer live together

**separation agreement:** a contract made between separated spouses outlining such things as the division of property and mutual obligations

**sole custody:** a court order giving one parent legal responsibility for important decisions regarding his or her child


**solemnization of marriage:** the steps and processes involved in legally marrying two people

**spousal support:** money paid by one spouse to the other after their marriage has broken down

**statute:** a law passed by a government

**surrogate mother:** a woman who carries the fertilized egg of another woman to term

**unconstitutional:** not in accordance with Canada's fundamental law, the *Constitution Act, 1982*



**undue influence:** unfair pressure to do something that is put on someone by another party in a position of authority, power, or seniority

**will:** a legal document a person draws up to specify how his or her property is to be distributed at death







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